INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

# CASE CONCERNING CERTAIN PROPERTY

(LIECHTENSTEIN *v.* GERMANY)

VOLUME I
Application; Memorial of Liechtenstein

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COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

# AFFAIRE RELATIVE À CERTAINS BIENS

(LIECHTENSTEIN c. ALLEMAGNE)

VOLUME I
Requête; mémoire du Liechtenstein

Abbreviated reference:

*I.C.J. Pleadings, Certain Property (Liechtenstein* v. *Germany)*, Vol. I

Référence abrégée:

*C.I.J. Mémoires, Certains biens (Liechtenstein c. Allemagne)*, vol. I

ISSN 0074-4433
ISBN 978-92-1-071060-2

**Sales number**
**Nº de vente:** **951**

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IMPRIMÉ EN FRANCE
PRINTED IN FRANCE

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## VOLUME I

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This case, entered on the Court's General List on 1 June 2001 under number 123, was the subject of a Judgment delivered on 10 February 2005 (*Certain Property (Liechtenstein* v. *Germany), Preliminary Objections, Judgment, I.C.J. Reports 2005*, p. 6).

The documents relating to the case are being published in the following order:

Volume I. Application; Memorial of Liechtenstein.
Volume II. Preliminary Objections of Germany; Written Observations of Liechtenstein; Verbatim Records of the Hearings.

*

For the purposes of this edition, the Court has decided that the written pleadings will be reproduced *in full*; it will therefore also include the documents annexed to those pleadings, which are not made available on the Court's website. The reproduction of all the annexed documents in this edition will enable practitioners to appreciate better the full scope of the arguments developed by the Parties in their written pleadings. As usual, the verbatim records of the public hearings appear after the pleadings; these verbatim records are published here in their final corrected versions, providing a useful supplement to the provisional versions made available on the Court's website.

Since the Court wishes to publish these documents as quickly as possible, it has been decided, where technically feasible, to reproduce the pleadings in the form in which they were submitted by the Parties.

Some documents in this edition have thus been scanned, and there are consequently two types of page numbering for the items included in these volumes: in addition to the normal continuous pagination, the original page numbers of the scanned documents are provided in brackets for reference purposes.

The Hague, 2009.

La présente affaire, inscrite au rôle général de la Cour sous le numéro 123 le 1^er^ juin 2001, a fait l'objet d'un arrêt rendu le 10 février 2005 (*Certains biens (Liechtenstein c. Allemagne), exceptions préliminaires, arrêt, C.I.J. Recueil 2005*, p. 6).

Les documents relatifs à cette affaire sont publiés dans l'ordre suivant :

Volume I. Requête ; mémoire du Liechtenstein.
Volume II. Exceptions préliminaires de l'Allemagne ; observations écrites du Liechtenstein ; comptes rendus d'audience.

*

Aux fins de la présente édition, la Cour a décidé que les pièces de la procédure écrite seront reproduites *intégralement* ; cette édition comprendra donc aussi les documents annexés auxdites pièces — qui ne sont pas mis en ligne sur le site Internet de la Cour. La reproduction de l'ensemble des documents annexés dans cette édition permettra aux praticiens de mieux apprécier, dans toute sa portée, l'argumentation développée par les parties dans leurs écritures. Comme à l'accoutumée, les comptes rendus des audiences publiques sont publiés à la suite des pièces de procédure écrite ; ces comptes rendus apparaissent ci-après dans leur version finale corrigée — qui complète ainsi utilement la version provisoire mise en ligne sur le site de la Cour.

La Cour souhaitant que lesdits documents paraissent aussi rapidement que possible, il a été décidé, chaque fois que les moyens techniques le permettraient, de reproduire les pièces de procédure en l'état où elles ont été présentées par les parties.

Ainsi, certaines pièces de la présente édition ont été scannées et, de ce fait, les titres courants du présent ouvrage comportent deux genres de folios : outre la pagination continue habituelle, on trouvera, entre crochets, la pagination d'origine des pièces scannées, à laquelle il faudra se reporter en cas de renvoi.

La Haye, 2009.

# CONTENTS — TABLE DES MATIÈRES

Page

**Application Instituting Proceedings Submitted by the Government of Liechtenstein — Requête introductive d'instance présentée par le Gouvernement du Liechtenstein**

THE MINISTER FOR FOREIGN AFFAIRS OF THE PRINCIPALITY OF LIECHTENSTEIN TO THE REGISTRAR OF THE INTERNATIONAL COURT OF JUSTICE . . . . . . . . 3

I. Jurisdiction of the Court . . . . . . . . . . . . . . . . . . . 4
II. Background to the dispute . . . . . . . . . . . . . . . . . . 4
III. The dispute between Liechtenstein and Germany . . . . . . . . . 8
IV. The claims of Liechtenstein . . . . . . . . . . . . . . . . . 10
V. Relief requested . . . . . . . . . . . . . . . . . . . . . 11

*Attachment 1.* Exchange of notes of 5 May/10 June 1997 . . . . . . . . . 13
*Attachment 2.* Chancellor Dr. Helmut Kohl's letter of 14 January 1997. . . . 18

**Memorial of Liechtenstein — Mémoire du Liechtenstein**

INTRODUCTION . . . . . . . . . . . . . . . . . . . . . . . 23

A. Liechtenstein's application . . . . . . . . . . . . . . . . . 24
B. Background to the dispute. . . . . . . . . . . . . . . . . . 25
C. The dispute between Liechtenstein and Germany . . . . . . . . . 28
D. Jurisdiction of the Court and admissibility of Liechtenstein's Application . 30
E. Structure of this Memorial . . . . . . . . . . . . . . . . . 31

PART ONE. FACTUAL BACKGROUND . . . . . . . . . . . . . . . . 33

Chapter 1. Liechtenstein and Liechtenstein property . . . . . . . . . . 34

A. The position of Liechtenstein in and after World War II . . . . . . 35
B. Seizure of the property of Liechtenstein nationals under the "Beneš Decrees" . . . . . . . . . . . . . . . . . . . . . . . . 38
C. The *Pieter-van-Laer* case . . . . . . . . . . . . . . . . . 45

Chapter 2. The post-war reparations regime . . . . . . . . . . . . . 49

A. Introduction . . . . . . . . . . . . . . . . . . . . . . . 50
B. The measures taken by the Allied and Associated Powers . . . . . . 50
  1. The Yalta Protocol of 11 February 1945 . . . . . . . . . . 51
  2. The Potsdam Protocol of 2 August 1945 . . . . . . . . . . 52
  3. The Paris Agreement of 14 January 1946 . . . . . . . . . . 53
C. Implementation of the agreements of the Allied and Associated Powers . 55
  1. Law No. 5 of the Control Council of 30 October 1945 . . . . . . 56
  2. Law No. 63 of the Council of the Allied High Commission of 31 August 1951 . . . . . . . . . . . . . . . . . . . . . 58
D. The Settlement Convention of 26 May 1952 . . . . . . . . . . . 60
E. Further development of the Settlement Convention . . . . . . . . 65

Page

1. The Treaty on the Final Settlement with respect to Germany of 12 September 1990 (Two-Plus-Four-Treaty) . . . . . . . . . . 65
2. The Exchange of Notes of 27 and 28 September 1990 . . . . . . 66

Chapter 3. Germany's change of position . . . . . . . . . . . . . . 69

A. Introduction . . . . . . . . . . . . . . . . . . . . . 70
B. Germany's former position . . . . . . . . . . . . . . . . . 71

1. Germany regarded seizure of German external assets as unlawful . . 71
2. Germany acknowledged the reparation measures only as a fact and did not recognize them . . . . . . . . . . . . . . . . . 73

C. Germany's position after amendments of the Settlement Convention . . 78

1. The decisions of the German Civil Courts in the *Pieter-van-Laer* case . 79
2. The Decision of the *Bundesverfassungsgericht* (Federal Constitutional Court) of 14 January 1998. . . . . . . . . . . . . . 83
3. Statements of the Municipality of Cologne . . . . . . . . . . 85
4. Statements of the German Government before the European Court of Human Rights . . . . . . . . . . . . . . . . . . . 88
5. Diplomatic correspondence and bilateral consultations . . . . . . 90

D. Decision to submit the dispute to the Court . . . . . . . . . . 101

PART TWO. THE CLAIMS OF LIECHTENSTEIN . . . . . . . . . . . . . 102

Chapter 4. Germany's failure to respect Liechtenstein's neutrality and sovereignty . . . . . . . . . . . . . . . . . . . . . . . 103

A. Overview . . . . . . . . . . . . . . . . . . . . . . 104
B. Liechtenstein was a neutral State in World War II . . . . . . . . 106
C. The law of neutrality . . . . . . . . . . . . . . . . . . 107
D. Germany's violation of the law of neutrality . . . . . . . . . . 114
E. The breach of the duty to respect the neutral character of Liechtenstein and of Liechtenstein nationals gives rise to a claim of the neutral State . . . 117
F. Germany's failure to respect Liechtenstein's sovereignty . . . . . . 118

1. Germany may not treat Liechtenstein nationals as its own nationals for reparation purposes . . . . . . . . . . . . . . . . . . 120
2. The treatment by Germany of Liechtenstein nationals amounts, *pro tanto*, to an unlawful involuntary *de facto* naturalization . . . . . 122

Chapter 5. Germany's obligations of compensation for property brought within the reparations regime . . . . . . . . . . . . . . . . . . 125

A. Germany's interference with Liechtenstein property rights . . . . . 126

1. The Settlement Convention does not relate to Liechtenstein property . 126

(a) Interpretation according to the ordinary meaning . . . . . . . 129
(b) Interpretation according to the context, object and purpose of the Settlement Convention. . . . . . . . . . . . . . . . 131

2. Interference with property rights. . . . . . . . . . . . . . 135

B. Failure to compensate Liechtenstein notwithstanding its inclusion within the reparations regime . . . . . . . . . . . . . . . . . 142

1. The regime of Articles 3 and 5 of Chapter Six of the Settlement Convention . . . . . . . . . . . . . . . . . . . . 142
2. Duty of Germany to compensate victims of reparation measures. . . 143

Page

Chapter 6. Unjust enrichment and Germany's change of position . . . . . 156

A. Introduction and overview . . . . . 157
B. Germany's unjust enrichment at Liechtenstein's expense . . . . . 158

1. The principle of unjust enrichment (*enrichissement sans cause*) in international law . . . . . 158

(a) Unjust enrichment as a general principle of law . . . . . 158

(i) Domestic legal systems recognize unjust enrichment as basis for compensation or restitution . . . . . 159
(ii) The principle is transposable to international law . . . . . 164

(b) The principle of unjust enrichment has been incorporated into international law . . . . . 166

(i) Unjust enrichment as a basic principle of international law . . 166
(ii) Unjust enrichment as a cause of action . . . . . 168

(c) The content of the principle of unjust enrichment . . . . . 170

2. Unjust enrichment of Germany through the inclusion of the Liechtenstein property within the reparations regime . . . . . 171

(a) Germany's enrichment . . . . . 171

(i) The debt and the debtor . . . . . 171
(ii) The enrichment . . . . . 172

(b) Liechtenstein's correlative impoverishment . . . . . 175
(c) The link between Germany's enrichment and Liechtenstein's impoverishment . . . . . 175
(d) The absence of legal cause or justification . . . . . 177

C. Germany's unjustified change of position to Liechtenstein's detriment . . 178

1. Equitable claims based on a detrimental and unjustified change of position: in principle . . . . . 178
2. The principle applied to the present case . . . . . 183

(a) The initial position of Germany and Liechtenstein concerning property seized under the "Beneš Decrees" . . . . . 183
(b) Germany's consequent refusal to compensate victims of the "Beneš Decrees" in the context of the reparations regime . . . . . 184
(c) Germany's unwarranted change of position after 1990 . . . . . 184
(d) The detriment to Liechtenstein arising from Germany's change of position . . . . . 189

D. Conclusion . . . . . 190

Chapter 7. Legal consequences of Germany's conduct towards Liechtenstein . 191

A. Germany's obligations of cessation and reparation (including compensation) . . . . . 192
B. The remedial situation . . . . . 194

1. Declaratory relief . . . . . 195
2. Cessation and assurances and guarantees of non-repetition . . . . 196
3. Reparation and, in particular, compensation . . . . . 198
4. Conclusion . . . . . 201

*Page*

CONCLUSION AND SUBMISSIONS . . . . . . . . . . . . . . . . . . 202

*Annexes to the Memorial of the Principality of Liechtenstein (Vol. I)* . . . . 205

*Annex 1.* Note of the Liechtenstein Government Addressed to the Political Department of the Swiss Confederation in Bern on 30 August 1939 . . . 206

*Annex 2.* Statement of the Swiss Ambassador Frölicher: *Copie de réception* of 1 September 1939. . . . . . . . . . . . . . . . . . . . 208

*Annex 3.* Note of the Foreign Office of the United Kingdom to the Swiss Ambassador in London of 1 September 1939 . . . . . . . . . . . 210

*Annex 4.* Note of the Italian Ministry of Foreign Affairs to the Swiss Ambassador in Rome of 4 September 1939 . . . . . . . . . . . 212

*Annex 5.* Note of the Foreign Ministry of the French Republic to the Swiss Embassy in Paris of 10 September 1939. . . . . . . . . . . . . 214

*Annex 6.* Czechoslovakian Decree No. 12 concerning the confiscation and accelerated allocation of agricultural property owned by Germans, Hungarians and also by people who have committed treason and acted as enemies of the Czech and Slovak people of 21 June 1945 . . . . . . 216

*Annex 7.* Czechoslovakian Decree No. 108 regarding the confiscation of enemy property and the national reconstruction fund of 25 October 1945 . 226

*Annex 8.* List of the families affected by the confiscation measures of the then Czechoslovakian Government . . . . . . . . . . . . . . . . 230

*Annex 9.* Decision of the Administrative Court in Bratislava of 21 November 1951 (Ref. No. GZ 138/46-5) . . . . . . . . . . . . . . . . 233

*Annex 10.* Declaration regarding the Defeat of Germany and the Assumption of Supreme Authority by the Allied Powers of 5 June 1945. . . . . . 239

*Annex 11.* Protocol of the Proceedings of the Crimea Conference of 11 February 1945 (Yalta Protocol) . . . . . . . . . . . . . . . 247

*Annex 12.* Report on the Tripartite Conference of Berlin of 2 August 1945 (Potsdam Protocol) . . . . . . . . . . . . . . . . . . . . . 255

*Annex 13.* Agreement on Reparation from Germany, on the Establishment of an Inter-Allied Reparation Agency and on the Restitution of Monetary Gold of 14 January 1946 (Paris Agreement) . . . . . . . . . . . . . 266

*Annex 14.* Allied Control Council Law No. 5 on Vesting and Marshalling of German External Assets of 30 October 1945 . . . . . . . . . . . 290

*Annex 15.* Law No. 63 of the Council of the Allied High Commission Clarifying the Status of German External Assets and of Other Property Taken by Way of Reparation or Restitution of 31 August 1951 . . . . 294

*Annex 16.* Convention on the Settlement of Matters Arising out of the War and the Occupation of 26 May 1952 as amended on 23 October 1954. . . . 299

*Annex 17.* Convention on Relations between the Three Powers and the Federal Republic of Germany of 26 May 1952 as amended on 23 October 1954. . 363

*Annexes to the Memorial of the Principality of Liechtenstein (Vol. II)* . . . . 379

*Annex 18.* Treaty on the Final Settlement with respect to Germany ("Two-Plus-Four-Treaty") of 12 September 1990 . . . . . . . . . . . . 380

*Annex 19.* Exchange of Notes constituting an Agreement concerning the Convention on Relations between the Three Powers and the Federal Republic of Germany of 26 May 1952 and the Convention on the Settlement of Matters Arising out of the War and the Occupation of 26 May 1952 of 27 September and 28 September . . . . . . . . . . . . . . . . 387

Page

*Annex 20.* Report of the Committee of the Federal Parliament for the Occupation Statute and Other External Affairs of 16 May 1952 . . . . 391
*Annex 21.* Statement of the Secretary of State of the German Federal Ministry of Finance of 22 February 1951 . . . . . . . . . . . . . . . . 393
*Annex 22.* Explanatory Memorandum of the Federal Government of Germany to the Settlement Convention of 21 July 1952 . . . . . . . . . . 395
*Annex 23.* Statement of the Committee for Legal Issues and Constitutional Law in the written report on the Settlement Convention of 15 November 1952 . . . . . . . . . . . . . . . . . . . . . . . . 399
*Annex 24.* Treaty on Mutual Relations between the Federal Republic of Germany and the Czechoslovak Socialist Republic of 11 December 1973 . 402
*Annex 25.* Statement of Defense of the Federal Republic of Germany in proceedings before the administrative court of Berlin, Kretschmer ./. Federal Republic of Germany of 25 June 2001 (Ref. No. VG 1 A 261.00). . . . 409
*Annex 26.* Statement of the German Government concerning the Prague Treaty of 11 June 1974 . . . . . . . . . . . . . . . . . . . . . . 412
*Annex 27.* Decision of the Federal Constitutional Court of Germany of 25 January 1977 (Ref. No. 1 BvR 210, 221, 222, 248, 301/74) . . . . 414
*Annex 28.* Decision of the Regional Court of Cologne of 10 October 1995 (Ref. No. 5 O 182/92) . . . . . . . . . . . . . . . . . . 416
*Annex 29.* Decision of the Court of Appeal of Cologne of 09 July 1996 (Ref. No. 22 U 215/95) . . . . . . . . . . . . . . . . . . . 433
*Annex 30.* Decision of the Federal Court of Justice of Germany of 25 September 1997 (Ref. No. II ZR 213/96) . . . . . . . . . . . 459
*Annex 31.* Interlocutory Order of the Federal Constitutional Court of Germany of 26 November 1997 (Ref. No. 2 BvR 1981/97) . . . . . . . . . 463
*Annex 32.* Decision of the Federal Constitutional Court of Germany of 28 January 1998 (Ref. No. 2 BvR 1981/97) . . . . . . . . . . . 467

*Annexes to the Memorial of the Principality of Liechtenstein (Vol. III)* . . . . 475

*Annex 33.* Statement of the Reigning Prince Hans Adam II of Liechtenstein, represented by the Law Firm Wirtz & Kraneis, before the Regional Court of Cologne of 11 July 1995 (*Reigning Prince Hans Adam II of Liechtenstein ./. Municipality of Cologne*, Ref. No. 5 O 182/92) . . . . . . . . . 476
*Annex 34.* Statement of the Historical Monuments Office in Brno, represented by the Law Firm Uhlenbruch, Bartholomé & Dell, before the Regional Court of Cologne of 8 March 1995 (*Reigning Prince Hans Adam II of Liechtenstein ./. Municipality of Cologne*, Ref. No. 5 O 182/92) . . . . 478
*Annex 35.* Aide Memoire of the Principality of Liechtenstein to the German Ambassador Heyken of 4 October 1995. . . . . . . . . . . . . 481
*Annex 36.* Memorial of the Agent of the Government of the Federal Republic of Germany submitted to the European Court of Human Rights of 29 October 1999 . . . . . . . . . . . . . . . . . . . . . 485
*Annex 37.* German-Czech Declaration on Mutual Relations and their Future Development of 21 January 1997 . . . . . . . . . . . . . . . 510
*Annex 38.* Official Note of the Government of the Principality of Liechtenstein of 5 May 1997. . . . . . . . . . . . . . . . . . . . . . 515
*Annex 39.* Verbal Note of the Embassy of the Federal Republic of Germany of 10 June 1997 . . . . . . . . . . . . . . . . . . . . . 518
*Annex 40.* Letter of the Chancellor of the Federal Republic of Germany, Dr. Helmut Kohl, of 14 January 1997 . . . . . . . . . . . . . 520

*Page*

*Annex 41.* Aide Memoire of the Principality of Liechtenstein to the Foreign Office of the Federal Republic of Germany of 3 June 1998. . . . . . . 522
*Annex 42.* List of Questions submitted by the Principality of Liechtenstein to the Federal Government of Germany of July 1998 . . . . . . . . . 524
*Annex 43.* Letter of the Foreign Minister of Liechtenstein, Dr. Andrea Willi, to the German Foreign Minister, Josef Fischer, of 9 December 1999. . . . 527
*Annex 44.* Aide Memoire of the Foreign Minister of Liechtenstein to the German Foreign Minister of 9 December 1999 . . . . . . . . . . 529
*Annex 45.* Letter of the German Foreign Minister, Josef Fischer, to the Foreign Minister of Liechtenstein, Dr. Andrea Willi, of 20 January 2000 . . . . 537
*Annex 46.* Czechoslovakian Constitutional Decree of the President of the Republic of 2 August 1945 on the Regulation of the Czechoslovak Nationality of Persons belonging to the German and Hungarian People . . 540
*Annex 47.* Statement of the Federal Government in the proceedings on the second action for a declaratory judgement of the parliamentary group of the SPD of 14 August 1953 . . . . . . . . . . . . . . . . . . . 544

# APPLICATION INSTITUTING PROCEEDINGS SUBMITTED BY THE GOVERNMENT OF LIECHTENSTEIN

# REQUÊTE INTRODUCTIVE D'INSTANCE PRÉSENTÉE PAR LE GOUVERNEMENT DU LIECHTENSTEIN

## I. THE MINISTER FOR FOREIGN AFFAIRS OF THE PRINCIPALITY OF LIECHTENSTEIN TO THE REGISTRAR OF THE INTERNATIONAL COURT OF JUSTICE

Vaduz, 29 May 2001.

I have the honour to inform you that, pursuant to Article 42 (1) of the Statute of the Court and to Article 40 (2) of the Rules of Court, the Government of the Principality of Liechtenstein, in accordance with the document annexed hereto, has appointed Rechtsanwalt Dr. Alexander Goepfert, attorney-at-law in Düsseldorf, as Agent for the purposes of filing an application against the Federal Republic of Germany and conducting all proceedings in respect thereof on behalf of the Principality of Liechtenstein against the Federal Republic of Germany.

Further, I have the honour to inform you that, pursuant to Article 31 (2) of the Statute of the Court and Article 35 (1) of the Rules of Court, the Government of the Principality of Liechtenstein exercises the power conferred by Article 31 of the Statute of the Court and designates Professor Ian Brownlie, C.B.E., Q.C., D.C.L., F.B.A., as its judge *ad hoc* for the purposes of these proceedings.

All communications concerning this case should be addressed to the Agent, Freshfields Bruckhaus Deringer, Freiligrathstrasse 1, D-40479 Düsseldorf (Germany), the address for service for the entire duration of the proceedings.

*(Signed)* Dr. Ernst WALCH,
Minister for Foreign Affairs.

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*Annex*

### APPOINTMENT OF AGENT

I, the undersigned, Dr. Ernst Walch, Minister for Foreign Affairs of the Principality of Liechtenstein, hereby certify that Dr. Alexander Goepfert, Rechtsanwalt, Düsseldorf (Germany), has been appointed by the Government of the Principality of Liechtenstein as Agent for the purpose of filing an application at the International Court of Justice at The Hague and conducting all proceedings in respect thereof on behalf of the Principality of Liechtenstein against the Federal Republic of Germany.

Done at Vaduz, 29 May 2001.

*(Signed)* Dr. Ernst WALCH,
Minister for Foreign Affairs.

# II. APPLICATION INSTITUTING PROCEEDINGS

*To the Registrar of the International Court of Justice, the undersigned being duly authorized by the Principality of Liechtenstein:*

1. I have the honour to submit, in accordance with Article 40 of the Statute and Article 38 of the Rules of Court, an Application instituting proceedings in the name of the Principality of Liechtenstein ("Liechtenstein") against the Federal Republic of Germany ("Germany"). The dispute submitted to the Court concerns decisions of Germany, in and after 1998, to treat certain property of Liechtenstein nationals as German assets having been "seized for the purposes of reparation or restitution, or as a result of the state of war" — i.e. as a consequence of World War II —, without ensuring any compensation for the loss of that property to its owners, and to the detriment of Liechtenstein itself.

## I. Jurisdiction of the Court

2. In accordance with Article 36 (1) of the Statute, the jurisdiction of the Court arises under Article 1 of the European Convention for the Peaceful Settlement of Disputes, done at Strasbourg on 29 April 1957[1]. Both Liechtenstein and Germany are parties to the Convention without reservation. The Convention entered into force as between the two States on 18 February 1980.

## II. Background to the Dispute

3. The Principality of Liechtenstein is an independent State which has been since 1950 a party to the Statute of the Court and since 1990 a member of the United Nations. It has a surface area of 160 km$^2$ and a population of approximately 32,000. It originally consisted of the county of Vaduz and the county of Schellenberg, which were united in 1434 as an independent unit *("reichsfrei")* of the Holy Roman Empire. Prince Johann Adam I von Liechtenstein acquired the principality at the beginning of the eighteenth century; it was renamed the Principality of Liechtenstein at that time. Liechtenstein was in a customs union with Austria between 1852 and 1919, but remained neutral in the First World War. Liechtenstein maintains direct diplomatic relations with more than 50 States and is a member of a number of international organizations, including the United Nations, the Council of Europe, the World Trade Organization (WTO) and the European Free Trade Association (EFTA), as well as a Participating State in the Organisation for Security and Co-operation in Europe (OSCE). In States where Liechtenstein has not established its own diplomatic

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[1] United Nations, *Treaty Series*, Vol. 320, p. 243.

and/or consular representation, Liechtenstein interests are dealt with by Switzerland on a case-by-case basis. Since 1924, Liechtenstein is part of the customs union with Switzerland, and since 1995 Liechtenstein is a member of the European Economic Area (EEA) and therefore has established a very close co-operation with the 15 Member States of the European Union and with Norway and Iceland, the two other EFTA Member States that together with Liechtenstein are also members of the EEA.

4. During World War II Liechtenstein (like Switzerland) was a neutral State. Its neutrality was recognized by all belligerents, including Germany.

5. In 1945, Czechoslovakia — during World War II an allied country and a belligerent against Germany — through a series of decrees (the Beneš decrees) seized German and Hungarian property located on its territory. Czechoslovakia applied those decrees not only to German and Hungarian nationals but also to other persons allegedly of German or Hungarian origin or ethnicity. For this purpose it treated the nationals of Liechtenstein as German nationals. As a consequence, the property of the then Prince of Liechtenstein and of his family as well as of other Liechtenstein nationals (the "Liechtenstein property") was seized as German property under the decrees. In particular the Prince was at no time a German national or ethnic German in the meaning of the Beneš decree, nor is his son, the present Prince. The property includes substantial arable land and forests, numerous castles and their contents, factories etc. It has never been returned to its owners nor has compensation been offered or paid. The application of the Beneš decrees to the Liechtenstein property remained an unresolved issue between Liechtenstein and Czechoslovakia until the dissolution of the latter, and it continues to be an unresolved issue as between Liechtenstein and the Czech Republic, on whose territory the vast majority of Liechtenstein property is located.

6. Germany was at all relevant times aware of the facts set out in the preceding paragraph.

7. Questions of title to private property seized in connection with a war, and of compensation for such seizure, cannot be determined unilaterally but must be the subject of agreement between the parties concerned, either in a final peace treaty or otherwise. No final peace treaty concerning Germany was concluded in the aftermath of World War II. But Germany accepted in principle the duty for reparations and compensation for seizures which arose from the war.

8. Of particular importance so far as Germany was concerned was the Convention on the Settlement of Matters arising out of the War and the Occupation, signed at Bonn on 26 May 1952 ("the Settlement Convention")[2]. Chapter Six of that Convention deals with reparation. Article 1 (1) of Chapter Six provided that the problem of reparation was to be "settled by the peace treaty

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[2] United Nations, *Treaty Series*, Vol. 332, p. 219. The Settlement Convention was amended by Schedule IV to the Protocol on the Termination of the Occupation Regime in the Federal Republic of Germany, Paris, 23 October 1954: United Nations, *Treaty Series*, Vol. 331, p. 253.

between Germany and its former enemies or by earlier agreements concerning this matter". In the meantime, in accordance with Article 3 (1) Germany agreed that it would

> "in the future raise no objections against the measures which have been, or will be, carried out with regard to German external assets or other property, seized for the purpose of reparation or restitution, or as a result of the state of war, or on the basis of agreements concluded, or to be concluded, by the Three Powers with other Allied countries, neutral countries or former allies of Germany".

By Article 3 (3), it further agreed that:

> "No claim or action shall be admissible against persons who shall have acquired or transferred title to property on the basis of the measures referred to in paragraph 1 . . . of this Article, or against international organizations, foreign governments or persons who have acted upon instructions of such organizations or governments."

By Article 5 Germany further agreed that:

> "The Federal Republic shall ensure that the former owners of property seized pursuant to the measures referred to in Articles 2 and 3 of this Chapter shall be compensated."

There was thus a régime with respect to property seized for the purposes of reparation. Property falling within that régime is specifically affected in that Germany is obliged to raise no objections to the seizure and to bar actions (including actions in its own courts) against persons, organizations or governments in possession of such property. Under this régime, Germany undertook to compensate "the former owners of property seized".

9. Under international law, having regard to Liechtenstein's neutrality and the absence of whatsoever links between Liechtenstein and the conduct of the war by Germany, any Liechtenstein property that may have been affected by measures of an Allied power could not be considered as "seized for the purpose of reparation or restitution, or as a result of the state of war". The Settlement Convention was only concerned with German property properly so-called, i.e. property of the German State or of its nationals.

10. Subsequent to the conclusion of the Settlement Convention, it was accordingly understood, as between Germany and Liechtenstein, that the Liechtenstein property did not fall within the régime of the Convention. In other words it was understood that the property was not "property, seized for the purpose of reparation or restitution, or as a result of the state of war" within the meaning of Article 3 (1) of the Convention. As a corollary, Germany maintained the position that property falling outside the scope of the Convention was unlawfully seized, that the German courts were not barred from considering claims affecting such property, and that no question of compensation by Germany to the "former owners" of such property under Article 5 arose.

11. The provisions of the Settlement Convention were not only concerned with relations between belligerents in the War. Article 4 (3) of Chapter Six of the Convention dealt with "property taken as German assets in Portugal, Spain, Sweden and Switzerland with respect to which agreements concluded by

the Three Powers are, or will be, in force". With respect to such property these States, which were, like Liechtenstein, neutral during World War II, Germany would negotiate arrangements "concerning the nature and amount of compensation to be paid to former German owners of assets in those countries". In fact agreements were reached between Germany and each of those four countries.

12. Liechtenstein, however, was not explicitly included into Article 4 (3) of Chapter Six of the Convention nor in any other provisions, because neither Germany nor the parties to the Settlement Convention regarded Liechtenstein property as "German property". As to the Liechtenstein assets seized in Czechoslovakia at the end of the war, Germany and Liechtenstein accordingly proceeded on the basis that these were not "taken as German assets", and that such property was not "seized for the purpose of reparation or restitution, or as a result of the state of war". It was on that basis, and only on that basis, that Germany was not required to recognize the validity of those seizures. It was on that basis, and only on that basis, that no issue of compensation as between Liechtenstein and Germany arose pursuant to Article 5 of Chapter Six.

13. As already noted, Article 1 (1) of Chapter Six of the Settlement Convention provided that the problem of reparation was to be "settled by the peace treaty between Germany and its former enemies or by earlier agreements concerning this matter". The subsequent provisions of the Convention were to apply "[p]ending the final settlement envisaged in paragraph 1 of this article". That final settlement occurred in 1990[3]. Consequential upon the Treaty on the Final Settlement with respect to Germany, the question of the future application of the Settlement Convention was also dealt with. This was done by an Exchange of Notes between the parties to that Convention[4]. By virtue of the exchange of notes, key provisions of the Convention remained in force. As a result, the provisions of the Convention which remained in force ceased to have a temporary or provisional character but became part of the final settlement in the matter of reparation and compensation. The provisions which remained in force included, in particular, Article 3 (1) and (3) of Chapter Six. By contrast, Article 5 of Chapter Six, dealing with the obligation of Germany to compensate the owners of property seized, was terminated.

14. Notwithstanding the deletion of Article 5, Germany has continued to be under the obligation to pay compensation with respect to property "seized for the purpose of reparation or restitution, or as a result of the state of war". According to Germany's understanding, in 1990 there was no further property which had belonged to nationals of third States, which was covered by the

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[3] See Federal Republic of Germany, German Democratic Republic, France, Union of Soviet Socialist Republics, United Kingdom, United States, Treaty on the Final Settlement with respect to Germany, Moscow, 12 September 1990: United Nations, *Treaty Series*, Vol. 1696, p. 128.

[4] France, Federal Republic of Germany, United Kingdom, United States, Exchange of Notes constituting an agreement concerning the Convention on relations between the Three Powers and the Federal Republic of Germany of 26 May 1952 and the Convention on the settlement of matters arising out of the war and the occupation of 26 May 1952, Bonn, 28 September 1990, United Nations, *Treaty Series*, No. 28492; *BGBL*, 1990, Vol. II, p. 1386.

régime of the Settlement Convention, but the seizure of which had not been compensated. On any other understanding, the deletion of Article 5 would necessarily have implied a breach of international law, since it would have left uncompensated by Germany the property of nationals of third States which had been "seized for the purpose of reparation or restitution, or as a result of the state of war".

15. The German legislation dealing with compensation of loss of property has only ever applied to German nationals. This means that the German legislation did not and does not apply to Liechtenstein nationals as nationals of a third party.

16. As far as issues of compensation concern persons of third State nationality whose property was "seized for the purpose of reparation or restitution, or as a result of the state of war", the position is different. Claims for loss on the part of third State nationals were left to be dealt with at the international level and were not prejudiced by the exchange of notes in 1990. Germany itself has repeatedly reaffirmed that any arrangement made by it with the Czech Republic "is not connected with any waiver of legal positions" on its part and "does not affect the rights of third States and their nationals"[5]. This was the position taken by the German Chancellor in 1997 in relation to the German-Czech Joint Declaration of that year. In a letter to the Reigning Prince of Liechtenstein, he said that the Declaration, then under negotiation, "leaves open legal questions in connection with expropriations in the then Czechoslovakia"[6].

## III. The Dispute between Liechtenstein and Germany

17. In 1998 the position of the Federal Republic of Germany changed, as a result of the decision of the Federal Constitutional Court of 28 January 1998. That decision concerned a painting[7] which was among the Liechtenstein property seized in 1945, and which was in the possession of the Historic Monument Office in Brno, Czech Republic, a State entity of the Czech Republic. It was brought to Germany for the purposes of an exhibition, and thus came into the possession of the Municipality of Cologne. At the request of the Reigning Prince, Prince Hans-Adam II, acting in his private capacity, the painting was attached pending determination of the claim by the German courts. Eventually, however, the claim failed. The Federal Constitutional Court held that the German courts were required by Article 3 of the Settlement Convention to treat the painting as German property in the sense of the Convention. As a necessary corollary, the painting was treated as the property of the Historic Monument Office, and the claimant's demand was rejected. In particular the effect of the Court's decision was that the painting was to be treated as property "seized for the purpose of reparation or restitution, or as a result of the state of war" within the meaning of Article 3. Accordingly the painting was released and

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[5] For the text of the Exchange of Notes of 5 May/10 June 1997 between Liechtenstein and Germany see Attachment 1.

[6] For the text of Chancellor Kohl's letter of 14 January 1997 see Attachment 2.

[7] The painting, by Pieter van Laer (1582-1642), is entitled "Szene um römischen Kalkofen". It was acquired by an ancestor of the Reigning Prince in 1767 and has since belonged to the personal estate of the Reigning Prince.

returned to the Czech Republic[8]. The decision of the Federal Constitutional Court is unappealable. It is attributable to Germany as a matter of international law and is binding upon Germany.

18. Following the decision, Prince Hans-Adam II, acting in his personal capacity, commenced proceedings against Germany before the European Court of Human Rights. That case concerns only the van Laer painting, and is based on Article 6 (1) and Article 14 of the European Convention on Human Rights, as well as Article 1 of the First Protocol to the Convention. The Court has referred the application to the Grand Chamber, where it is pending[9].

19. Liechtenstein itself also protested to Germany that the latter was treating as German assets which belonged to nationals of Liechtenstein, to their detriment and the detriment of Liechtenstein itself. Germany rejected this protest and in subsequent consultations it became clear that Germany now adheres to the position that the Liechtenstein assets as a whole were "seized for the purpose of reparation or restitution, or as a result of the state of war" within the meaning of the Convention, even though the decision of the Federal Constitutional Court only concerned a single item. In taking this position Germany remains faithful to the decision of its highest court in the matter; but at the same time it ignores and undermines the rights of Liechtenstein and its nationals in respect of the property.

20. In particular, Germany denies that by taking this position it has committed any breach of international law. According to Germany Liechtenstein property may lawfully be treated by the German courts as property "seized for the purpose of reparation or restitution, or as a result of the state of war". It further denies that it has any obligation to Liechtenstein to compensate it in respect of its conduct in that regard, or to make reparation for injury suffered by Liechtenstein and its citizens as a result of the change in Germany's legal position. There is accordingly a legal dispute between Liechtenstein and Germany as to the obligations of the latter with respect to the Liechtenstein property. This dispute exists generally with respect to the Liechtenstein property. It includes but is not limited to the van Laer painting which was the subject of the decision of the Federal Constitutional Court. It is this dispute which is the subject of the present Application[10].

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[8] *In the proceedings concerning the Constitutional Complaint of Prince Hans Adam II of Liechtenstein*, 2 BvR1981/97, decision of the Federal Constitutional Court, 28 January 1998.

[9] Application No. 42527/98, *Prince Hans-Adam II of Liechtenstein* v. *Federal Republic of Germany*.

[10] Conformably with Article 34 of the European Convention on Human Rights, the proceedings in the European Court of Human Rights are brought by the Ruling Prince in his private capacity and not as Head of State. Moreover the legal basis of claim is different, being based on specified articles of that Convention; cf. case concerning *Certain German Interests in Polish Upper Silesia, P.C.I.J., Series A, No. 6* (1925), at pp. 19-21. See also case concerning the *Factory at Chorzów (Claim for Indemnity) (Jurisdiction), P.C.I.J., Series A, No. 9* (1927), at pp. 26-31. Liechtenstein accepts that, in respect of any damages that may be awarded in the present proceedings, Germany is entitled to credit for any amounts that may be recovered in the proceedings before the European Court of Human Rights.

21. The dispute between the parties is admissible under the European Convention for the Peaceful Settlement of Disputes. Article 27 *(a)* of that Convention provides that:

> "The provisions of this Convention shall not apply to:
>
> *(a)* disputes relating to facts or situations prior to the entry into force of this Convention as between the parties to the dispute;
>
> *(b)* disputes which by international law are solely within the domestic jurisdiction of States."

The present dispute is not solely within the domestic jurisdiction of Germany under international law, and paragraph *(b)* accordingly has no application. As to paragraph *(a)*, this has no application to the legal obligation on which the applicant State relies. There is a distinction between facts or situations which are presupposed by a dispute and those which are the very essence of the dispute. Limitations such as that imposed by paragraph *(a)* are intended "to avoid, in general, a revival of old disputes"[11]. The present dispute arose in 1998 and it relates to the conduct of Germany in and since 1998[12].

22. A background fact in these proceedings is the fact of the seizure by Czechoslovakia in 1945 of the property of Liechtenstein nationals. This case concerns not that seizure as such, but Germany's change of position in 1998 and subsequently with respect to that seizure, as well as the performance of Germany's obligations towards Liechtenstein. It should also be noted that Article 32 (1) of the European Convention provides that the Convention shall remain applicable, even though a third State, whether a party to the Convention or not, has an interest in the dispute.

23. As to Article 30 of the European Convention, to the extent to which the dispute concerns "a decision with final effect" of the German courts, the present proceedings are brought within the 5-year time-limit laid down by that article.

24. The present proceedings are accordingly admissible.

## IV. THE CLAIMS OF LIECHTENSTEIN

25. Liechtenstein claims that:

*(a)* by its conduct with respect to the Liechtenstein property, in and since 1998, Germany failed to respect the rights of Liechtenstein with respect to that property;

*(b)* by its failure to make compensation for losses suffered by Liechtenstein and/or its nationals, Germany is in breach of the rules of international law.

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[11] As the Court phrased it in *Phosphates in Morocco, Preliminary Objections, P.C.I.J., Series A/B, No. 74* (1938), at p. 24.

[12] See *Electricity Company of Sofia and Bulgaria, P.C.I.J., Series A/B, No. 77* (1939), p. 82.

## V. RELIEF REQUESTED

26. For these reasons, each of which is pleaded in the alternative, Liechtenstein, reserving the right to supplement or to amend this Application and subject to the presentation to the Court of the relevant evidence and legal argument, requests the Court to adjudge and declare that Germany has incurred international legal responsibility and is bound to make appropriate reparation to Liechtenstein for the damage and prejudice suffered. Liechtenstein further requests that the nature and amount of such reparation should, in the absence of agreement between the parties, be assessed and determined by the Court, if necessary, in a separate phase of the proceedings.

27. Pursuant to Article 31 (2) of the Statute of the Court, Liechtenstein designates Professor Ian Brownlie, C.B.E., Q.C., D.C.L., F.B.A., as its judge *ad hoc* for the purposes of these proceedings.

28. Liechtenstein has designated the undersigned as its Agent for the purposes of these proceedings. Pursuant to Article 40 (1) of the Rules of Court, all communications relating to this case should be sent to the official address for service: Rechtsanwalt Dr. Alexander Goepfert, Freshfields Bruckhaus Deringer, Freiligrathstrasse 1, 40479 Düsseldorf, Germany.

Respectfully submitted,

30 May 2001.

*(Signed)* Dr. Alexander GOEPFERT,
Agent of the Principality of Liechtenstein.

AUTHENTICATION

I, Dr. Ernst Walch, Minister of Foreign Affairs of the Principality of Liechtenstein, hereby certify, in accordance with Article 38 (3) of the Rules of the International Court of Justice, that the above signature is that of Dr. Alexander Goepfert, who has been duly appointed as Agent for the Principality in respect of this Application.

30 May 2001.

*(Signed)* Dr. Ernst WALCH,
Minister of Foreign Affairs,
Principality of Liechtenstein.

## Inventory of Documents Filed

*Attachment 1.* Exchange of Notes of 5 May/10 June 1997.
*Attachment 2.* Chancellor Dr. Helmut Kohl's Letter of 14 January 1997.

## Attachment 1

### Exchange of Notes of 5 May/10 June 1997[1]

(See paragraph II.16.)

*Translation of the German original*

REGIERUNG DES FÜRSTENTUMS LIECHTENSTEIN

(GOVERNMENT OF THE PRINCIPALITY OF LIECHTENSTEIN)

The Government of the Principality of Liechtenstein presents its compliments to the Government of the Republic of Germany and has the honour to submit the following matter to its attention:

With reference to the *"Deutsch-Tschechische Erklärung über die Gegenseitigen Beziehungen und deren zukünftige Entwicklung"* (German-Czech Declaration on Mutual Relations and Their Future Development) signed by the Government of the Federal Republic of Germany and the Government of the Czech Republic in Prague on 21 January 1997, and item IV thereof, pursuant to which *"beide Seiten darüber übereinstimmen, daß das begangene Unrecht der Vergangenheit angehört"* (both sides agree that the wrongs committed shall be a matter of the past) and that *"jede Seite ihrer Rechtsordnung verpflichtet bleibt und respektiert, daß die andere Seite eine andere Rechtsauffassung hat"* (each side remains committed to its legal system and respects that the other side has a different legal position), it is the desire of the Government of the Principality of Liechtenstein to emphasize that this German-Czech Declaration will not affect the rights of the Principality of Liechtenstein and the rights of her citizens with regard to Liechtenstein assets which were expropriated by the Czechoslovakian Government contrary to international law, in spite of the fact that such expropriations were effected under the heading of *"volksdeutsches Vermögen"* (ethnic German assets) or *"deutsches Auslandsvermögen"* (German external assets).

In this context, the Government of the Principality of Liechtenstein points out once more that the Czech Republic is acting contrary to international law when describing as legitimate on the basis of their *"deutscher Charakter"* (German nature) the expropriations effected with respect to Liechtenstein citizens after 1945. The Government starts on the assumption that, in the context of her relations to the Czech Republic in the wake of the German-Czech Declaration, the Federal Republic of Germany will refrain from doing anything that might encroach upon the rights of Liechtenstein vis-à-vis the Czech Republic.

In its note of 5 May 1997, the Government of the Principality of Liechtenstein has in particular confirmed vis-à-vis the Government of the Czech Republic that it reserves all rights to assert such claims both for the Principality of Liechtenstein and her nationals which have arisen or will arise for them on the basis of the confiscation of Liechtenstein assets. The Government of the Principality of Liechtenstein furthermore emphasized vis-à-vis the Government of the Czech Republic that, with respect to the unlawful appropriation of Liechtenstein assets, the Czech Republic will not be free from its responsibility vis-à-vis the Principality of Liechtenstein by declarations made with third countries.

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[1] The translations into English are those submitted by Liechtenstein and certified as complete and correct by the Agent of Liechtenstein. References to coats of arms, seals etc. have not been reproduced. *[Note by the Registry.]*

The Government of the Principality of Liechtenstein avails itself of this opportunity to renew to the Government of the Federal Republic of Germany the assurance of its high esteem and consideration.

Vaduz, 5 May 1997.

*(Signature, illegible.)*

To the Government of the
Federal Republic of Germany
Bonn

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*Translation of the German original*

BOTSCHAFT DER BUNDESREPUBLIK DEUTSCHLAND
BERN

(EMBASSY OF THE FEDERAL REPUBLIC OF GERMANY, BERN)

*Gz* (Reference No.): RK 505.00 LST
(Please quote in your reply)

*Verbal Note*

The Embassy of the Federal Republic of Germany has the honour of confirming receipt of the Verbal Note of the Embassy of the Principality of Liechtenstein dated 5 May.

The German-Czech Declaration with Respect to the Mutual Relations and Their Future Development dated 21 January 1997 is a bilateral political declaration which does not affect the rights of third States and their nationals.

As far as the question of German claims with respect to property rights is concerned, this Declaration is not connected with any waiver of legal positions. On the contrary, the difference in the legal opinions of both States is expressly set out, as expressed in item IV of the Declaration, which reads: " . . . *wobei jede Seite ihrerRechtsordnung verpflichtet bleibt und respektiert, daß die andere Seite eine andere Rechtsauffassung hat*" ( . . . while each side remains committed to its legal system and respects that the other side has a different legal position).

**The Embassy of the Federal Republic of Germany uses this note as an opportunity to renew its formal expression of high esteem for the Embassy of the Principality of Liechtenstein.**

**Bern, 10 June 1997.**
**HF/Ed**
**L.S.**

**To the Embassy of the**
**Principality of Liechtenstein**
**3000 Bern**

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## EXCHANGE OF NOTES OF 5 MAY/10 JUNE 1997

*[Original German texts[1]]*

REGIERUNG DES FÜRSTENTUMS LIECHTENSTEIN

Die Regierung des Fürstentums Liechtenstein entbietet der Regierung der Bundesrepublik Deutschland ihre Hochachtung und beehrt sich, in folgender Angelegenheit an sie zu gelangen:

Unter Bezugnahme auf die am 21. Januar 1997 in Prag von der Regierung der Bundesrepublik Deutschland und von der Regierung der Tschechischen Republik unterzeichnete "Deutsch-Tschechische Erklärung über die Gegenseitigen Beziehungen und deren künftige Entwicklung", nach deren Ziffer IV "beide Seiten darüber übereinstimmen, dass das begangene Unrecht der Vergangenheit angehört" und dass "jede Seite ihrer Rechtsordnung verpflichtet bleibt und respektiert, dass die andere Seite eine andere Rechtsauffassung hat" ist es der Regierung des Fürstentums Liechtenstein ein Bedürfnis festzuhalten, dass diese Deutsch-Tschechische Erklärung die Rechte des Fürstentums Liechtenstein sowie die Rechte seiner Staatsangehörigen im Hinblick auf die völkerrechtswidrige Enteignung liechtensteinischen Vermögens durch die Tschechoslowakische Regierung nicht berührt, obwohl diese Enteignungen unter dem Titel "volksdeutsches Vermögen" oder "deutsches Auslandsvermögen" erfolgt sind.

Die Regierung des Fürstentums Liechtenstein weist in diesem Zusammenhang erneut auf das diesbezügliche völkerrechtswidrige Verhalten der tschechischen Republik hin, wenn diese die erfolgten Enteignungen liechtensteinischer Staatsangehöriger nach 1945 aufgrund ihres "deutschen Charakter" als legitim bezeichnet. Die Regierung geht davon aus, dass die Bundesrepublik Deutschland in ihren Beziehungen zur Tschechischen Republik im Nachgang zur Deutsch-Tschechischen Erklärung alles unterlassen wird, was die Rechte Liechtensteins gegenüber der Tschechischen Republik schmälern könnte.

Die Regierung des Fürstentums Liechtenstein hat sich in ihrer Note vom 5. Mai 1997 insbesondere gegenüber der Regierung der Tschechischen Republik erneut sowohl für das Fürstentum Liechtenstein als auch für seine Staatsangehörigen alle Ansprüche vorbehalten, welche diesen aufgrund der Konfiskation liechtensteinischen Vermögens entstanden sind oder noch entstehen. Die Regierung des Fürstentums Liechtenstein hat gegenüber der Regierung der Tschechischen Republik des weiteren festgehalten, dass die Tschechische Republik durch Erklärungen mit Drittländern gegenüber dem Fürstentum

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[1] The German originals have been certified as correct by the Agent of Liechtenstein. Coats of arms, seals etc. have not been reproduced. *[Note by the Registry.]*

Liechtenstein nicht aus ihrer Verantwortung im Hinblick auf die unrechtmässige Aneignung liechtensteinischen Vermögens entlassen wird.

Die Regierung des Fürstentums Liechtenstein benützt die Gelegenheit, um die Regierung der Bundesrepublik Deutschland ihrer ausgezeichneten Hochachtung zu versichern.

Vaduz, den 5. Mai 1997.

[*(Signed)* Illegible.]

An die Regierung der
Bundesrepublik Deutschland
Bonn

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BOTSCHAFT DER BUNDESREPUBLIK DEUTSCHLAND
BERN

*Gz.*: RK 505.00 LST
(Bitte bei Antwort angeben)

*Verbalnote*

Die Botschaft der Bundesrepublik Deutschland beehrt sich, der Botschaft des Fürstentums Liechtenstein den Eingang der Verbalnote vom 5. Mai zu bestätigen.

Bei der deutsch-tschechischen Erklärung über die gegenseitigen Beziehungen und deren künftige Entwicklung vom 21. Januar 1997 handelt es sich um eine bilaterale politische Erklärung, die die Rechte dritter Staaten und deren Angehöriger nicht berührt.

Was im übrigen die Frage deutscher vermögensrechtlicher Ansprüche betrifft, ist mit der Erklärung keine Aufgabe von Rechtspositionen verbunden. Es wird im Gegenteil ausdrücklich eine Unterschiedlichkeit der Rechtsauffassungen zwischen beiden Staaten festgehalten, wie in Ziffer IV der Erklärung zum Ausdruck kommt, worin es heißt: " . . . wobei jede Seite ihrer Rechtsordnung verpflichtet bleibt und respektiert, daß die andere Seite eine andere Rechtsauffassung hat".

Die Botschaft der Bundesrepublik Deutschland benutzt diesen Anlaß, die Botschaft des Fürstentums Liechtenstein erneut ihrer ausgezeichneten Hochachtung zu versichern.

Bern, den 10. Juni 1997.
HF/Ed
L.S.

An die Botschaft des
Fürstentums Liechtenstein
3000 Bern

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## Attachment 2

### CHANCELLOR DR. HELMUT KOHL'S LETTER OF 14 JANUARY 1997[1]

(See paragraph II.16.)

*Translation of the German original*

BUNDESREPUBLIK DEUTSCHLAND
DER BUNDESKANZLER

(FEDERAL REPUBLIC OF GERMANY
THE CHANCELLOR)

Bonn, 14 January 1997.

COPY

His Serene Reigning Highness
Prince Hans-Adam II of Liechtenstein
Vaduz Castle

Vaduz

(Stamp) Received 20 January 1997.

Your Highness,

I would like to thank you very much indeed for your letter of 14 November 1996. It is a pleasure for me, too, to recall our interesting conversation here in Bonn.

It was with interest that I took note of your explanations concerning the litigation pending between you and the Municipality of Cologne. I am sure you will understand that I do not want to make a statement on this matter, because this is a lawsuit that is still pending and the Federal Government cannot exert any influence thereon.

As far as the German-Czech Joint Declaration is concerned, it will not have any influence on this lawsuit, because it leaves open legal questions in connection with expropriations in the then Czechoslovakia.

I am pleased to avail myself of this opportunity to renew my best wishes for a Happy New Year for you.

With best regards,

Yours sincerely,

*(Signed signature, illegible.)*

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[1] The translation into English is that submitted by Liechtenstein and certified as complete and correct by the Agent of Liechtenstein. *[Note by the Registry.]*

## Chancellor Dr. Helmut Kohl's Letter of 14 January 1997

*[Original German text[1]]*

BUNDESREPUBLIK DEUTSCHLAND
DER BUNDESKANZLER

Bonn, den 14. Januar 1997.

**KOPIE**

Seiner Durchlaucht
Fürst Hans-Adam II.
von und zu Liechtenstein
Schloß Vaduz

Vaduz

Eingegangen 20. Jan. 1997.

Durchlaucht,

für Ihr Schreiben vom 14. November 1996 danke ich Ihnen herzlich. Auch ich denke gern an unser gutes Gespräch hier in Bonn zurück.

Mit Interesse habe ich ihre Ausführungen über den anhängigen Rechtsstreit zwischen Ihnen und der Stadt Köln zur Kenntnis genommen. Wie Sie sicher verstehen werden, möchte ich in der Sache nicht Stellung nehmen, da es sich um ein weiterhin anhängiges Rechtsverfahren handelt, auf das die Bundesregierung in keiner Weise Einfluß nehmen kann.

Die deutsch-tschechische Gemeinsame Erklärung wird im übrigen keinerlei Einfluß auf diesen Rechtsstreit haben, da sie Rechtsfragen im Zusammenhang mit Enteignungen in der damaligen Tschechoslowakei offenhält.

Gern nutze ich diese Gelegenheit, um Ihnen für das Neue Jahr noch einmal alles Gute zu wünschen.

Mit freundlichen Grüßen

[*(Signed)* Illegible.]

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[1] The German original has been certified as correct by the Agent of Liechtenstein. *[Note by the Registry.]*

# MEMORIAL OF LIECHTENSTEIN

# MÉMOIRE DU LIECHTENSTEIN

## INTRODUCTION

## A. Liechtenstein's application

1. On 30 May 2001, Liechtenstein lodged its Application instituting proceedings in the name of the Principality of Liechtenstein (hereafter "Liechtenstein") against the Federal Republic of Germany (hereafter "Germany"). The dispute thereby brought to the Court concerns a decision by Germany to treat certain property of Liechtenstein nationals (hereafter the "Liechtenstein property") as having been "seized for the purpose of reparation or restitution, or as a result of the state of war", without ensuring any compensation for the loss of that property to its Liechtenstein owners, and to the detriment of Liechtenstein itself.

2. The property in question includes substantial arable land and forests, numerous buildings and their contents, factories etc. It was seized by Czechoslovakia in 1945 under the "Beneš Decrees", on the basis that its owners were "German". About 38 Liechtenstein nationals were affected as owners of the property, including the then Prince of Liechtenstein and members of his family. In fact at no time were the owners of the property concerned German nationals.

3. Beginning in 1995, Germany has classified all the Liechtenstein property as having been "seized for the purpose of reparation or restitution, or as a result of the state of war", within the meaning of Article 3 of Chapter Six of the Convention on the Settlement of Matters arising out of the War and the Occupation, signed at Bonn on 26 May 1952 (hereafter the "Settlement Convention") (Annex 16).[1] It has done so by a combination of decisions of its courts and statements by Ministers and officials.

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[1] *United Nations Treaty Series*, No. 4762. The Settlement Convention was amended by Schedule IV to the Protocol on the Termination of the Occupation Regime in the Federal Republic of Germany, Paris, 23 October 1954: *United Nations Treaty Series*, No. 4758.

4. By virtue of this conduct, Germany has thereby

   (a) failed to respect the sovereignty and neutrality of Liechtenstein, and has committed other breaches of international law as specified in this Memorial, and

   (b) in consequence of its acts, is liable to compensate Liechtenstein for the injury and damage suffered.

5. By order of 28 June 2001, the Court laid down the timetable for the proceedings, with Liechtenstein to file its Memorial by 28 March 2002. This Memorial is filed in accordance with that Order.

## B. Background to the dispute

6. During World War II, Liechtenstein was a neutral State. Its neutrality was generally recognized, including by Germany.

7. In 1945, Czechoslovakia through a series of decrees (hereafter the "Beneš Decrees") seized property located on its territory. Czechoslovakia applied those decrees not only to German nationals but also to other persons allegedly belonging to the German "people", including to nationals of Liechtenstein. However, the present case does not deal with Liechtenstein's claims against the Czech Republic, but only concerns claims against Germany arising from Germany's own conduct in and after 1995.

8. Questions of title to property seized in time of war, and of compensation for such seizure, cannot be determined unilaterally but must be the subject of agreement between the parties concerned, either in a final peace treaty or otherwise. No final peace treaty was ever concluded in the aftermath of World War II between Germany and the Allied Powers. But the question of repara-

tions and compensation for seizures was regulated by agreement. Of particular importance so far as Germany was concerned was the Settlement Convention (Annex 16). Chapter Six of that Convention deals with reparations. In accordance with Article 3 (1) of Chapter Six, Germany agreed that it would...

> "in the future raise no objections against the measures which have been, or will be, carried out with regard to German external assets or other property, seized for the purpose of reparation or restitution, or as a result of the state of war, or on the basis of agreements concluded, or to be concluded, by the Three Powers with other Allied countries, neutral countries or former allies of Germany."

By Article 3 (3), it further agreed that:

> "No claim or action shall be admissible against persons who shall have acquired or transferred title to property on the basis of the measures referred to in paragraph 1... of this Article, or against international organizations, foreign governments or persons who have acted upon instructions of such organizations or governments."

By Article 5 Germany further agreed that:

> "The Federal Republic shall ensure that the former owners of property seized pursuant to the measures referred to in Articles 2 and 3 of this Chapter shall be compensated."

9. There was thus created a special regime with respect to property seized for the purpose of reparation. Property falling within that regime is specifically affected in that Germany is obliged to raise no objections to the seizure, to bar actions (including actions in its own courts) against persons, organizations or governments in possession of such property, and thus to recognise the title of those persons. As a corollary of the regime, Germany undertook to compensate "the former owners of property seized".

10. Subsequent to the conclusion of the Settlement Convention, Germany and Liechtenstein both proceeded on the basis that the Liechtenstein property did

not fall within the regime of the Convention. It was understood that the property was not "property, seized for the purpose of reparation or restitution, or as a result of the state of war" within the meaning of Article 3 (1) of the Convention. As a corollary, Germany maintained the position that property falling outside the scope of the Convention was unlawfully seized, that the German courts were entitled to consider claims affecting such property, and that no question of compensation to the "former owners" of such property under Article 5 arose.

11. Article 1 (1) of Chapter Six of the Settlement Convention provided that the problem of reparation was to be "settled by the peace treaty between Germany and its former enemies or by earlier agreements concerning this matter". The subsequent provisions of the Convention were to apply "[P]ending the final settlement envisaged in paragraph 1 of this Article". When that final settlement occurred, as a result of a series of agreements in 1990,[2] key provisions of the Settlement Convention remained in force by virtue of an Exchange of Notes between the parties to that Convention. The provisions which remained in force included, in particular, Articles 3 (1) and (3) of Chapter Six of the Settlement Convention.[3] By contrast Article 5 of Chapter Six of the Settlement Convention was terminated. Thus Germany continued - and continues - to be under the obligations of the Settlement Convention with respect to property "seized for the purpose of reparation or restitution, or as a result of the state of war". The only reason why no further compensation arrangements were envisaged under Article 5 was that these had already been made. According to Germany's understanding, in 1990, there was no further property which was covered by the regime of the Settlement Convention but the seizure of which had not been

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[2] See Federal Republic of Germany, German Democratic Republic, France, Union of Soviet Socialist Republics, United Kingdom, United States, Treaty on the Final Settlement with respect to Germany, Moscow, 12 September 1990, *United Nations Treaty Series*, No. 29226, Federal Law Gazette (*Bundesgesetzblatt*) 1990 II, p. 1318.

[3] France, Federal Republic of Germany, United Kingdom, United States, Exchange of Notes concerning the Relations Convention and the Settlement Convention, Bonn, 28 September 1990, *United Nations Treaty Series*, No. 28492; Federal Law Gazette (*Bundesgesetzblatt*) 1990 II p. 1386.

compensated for. On any other basis, the deletion of Article 5 would have implied a breach of international law, since it would have left uncompensated by Germany those nationals of third States whose property had been "seized for the purpose of reparation or restitution, or as a result of the state of war". With respect to any such property, Germany would have been in the position of treating it as subject to the regime of war reparations without any form of compensation to the dispossessed owners.

12. Even after the amendments made to the Settlement Convention in 1990, Germany continued to take the position that the Convention did not cover the Liechtenstein property, which had not been "seized for the purpose of reparation or restitution, or as a result of the state of war". Thus Germany continued to recognize the sovereignty and neutrality of Liechtenstein and that the claims of the owners of the Liechtenstein property remained open. In a letter to the Reigning Prince of Liechtenstein, the German Chancellor, Mr. Kohl, said that the Declaration, then under negotiation, "leaves open legal questions in connection with expropriations in the then Czechoslovakia" (Annex 40).

### C. The dispute between Liechtenstein and Germany

13. In the years after 1995, the position of the Federal Republic of Germany changed, as a result of decisions of its courts, and ultimately of the Federal Constitutional Court of 28 January 1998, and of the adoption and extension of the court decisions by the Government of Germany. These decisions concerned a painting[4] which was among the Liechtenstein property seized in 1945, and which was in the possession of the Historic Monuments Office in Brno, Czech Republic, a State entity of the Czech Republic. It was brought to Germany for the purpose of an exhibition, and thus came into the possession of the Municipality of Cologne. At the request of the Reigning Prince, Prince Hans-Adam II,

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[4] The painting, by Pieter van Laer, is entitled "Szene um einen römischen Kalkofen". It was part of the Princely family collection since the 18th century. It is not State property of Liechtenstein.

acting in his private capacity, the painting was seized pending determination of the claim. Eventually, however, the claim failed, the Federal Constitutional Court holding that the German courts were required by Article 3 of Chapter Six of the Settlement Convention to treat the painting as the property of the Historic Monuments Office, and not to entertain the claimant's demand. In particular it held that the painting was to be treated as property "seized for the purpose of reparation or restitution, or as a result of the state of war" within the meaning of Article 3. Accordingly the painting was released and returned to the Czech Republic. The decision of the Federal Constitutional Court is final and without appeal. It is attributable to Germany as a matter of international law and is binding upon Germany as a matter of German law.

14. Following the decision, Liechtenstein protested to Germany that the latter was treating assets which belonged to citizens of Liechtenstein as German assets, to the detriment of Liechtenstein and of its nationals. Germany rejected this protest. In subsequent consultations it became clear that Germany now adheres to the position that the Liechtenstein assets as a whole were "seized for the purpose of reparation or restitution, or as a result of the state of war", even though the decision of the Federal Constitutional Court only concerned a single item. In taking this position Germany ignores and undermines the rights of Liechtenstein and its nationals in relation to the Liechtenstein property as a whole, as well as failing to respect the sovereignty and neutrality of Liechtenstein itself.

15. Thereupon the Reigning Prince of Liechtenstein, acting in his personal capacity, commenced proceedings before the European Court of Human Rights. The case between the Reigning Prince and the Federal Republic of Germany concerned only the Pieter-van-Laer painting, and was based on Article 6 (1) and Article 14 of the European Convention of Human Rights, as well as Article 1

of the First Protocol to that Convention. The Application was rejected by the European Court.[5]

16. The question before this Court in the present case does not concern individual human rights under the European Convention on Human Rights, but rather the rights of Liechtenstein as a State and its nationals under general international law and in relation to the post-war reparations regime. In particular the question is whether in its treatment of the Liechtenstein property in and after 1995, Germany has acted consistently with its obligations to Liechtenstein under international law. Germany denies that it has committed any breach of international law, and thus claims that it is entitled to treat the Liechtenstein property as property "seized for the purpose of reparation or restitution, or as a result of the state of war". It further denies that it has any obligation to Liechtenstein to compensate it in respect of its conduct in that regard, or to make reparation for injury suffered by Liechtenstein as a result of the change in Germany's legal position. There is accordingly a legal dispute between Liechtenstein and Germany. It is this dispute which is the subject of the present Application.

## D. Jurisdiction of the Court and admissibility of Liechtenstein's Application

17. In accordance with Article 36 (1) of the Statute of the International Court of Justice, the jurisdiction of the Court arises under Article 1 of the European Convention for the Peaceful Settlement of Disputes of 29 April 1957 (hereafter "the Convention").[6] Both Liechtenstein and Germany are parties to the Convention without reservation. The Convention entered into force as between the two States on 18 February 1980.

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[5] Judgment of the European Court of Human Rights of 12 July 2001, Appl. No. 42527/98.

[6] *United Nations Treaty Series*, No. 4646.

18. The dispute between the parties is admissible under the Convention. Article 27 of the Convention provides that:

> "The provisions of this Convention shall not apply to:
>
> (a) disputes relating to facts or situations prior to the entry into force of this Convention as between the parties to the dispute;
>
> (b) disputes which by international law are solely within the domestic jurisdiction of States."

The present dispute arises from and concerns conduct of German courts and officials in and after 1995. It concerns the effect of the post-war reparations regime and is not solely within the domestic jurisdiction of Germany under international law.

19. To the extent that the dispute concerns "a decision with final effect" of the German courts, the decision in question was that of the Federal Constitutional Court of 28 January 1998. The present proceedings are brought within the 5-year time limit laid down by Article 29 of the Convention.

20. This Court accordingly has jurisdiction over the dispute, and the present proceedings are admissible under the Convention.

### E. Structure of this Memorial

21. This Memorial is in two Parts. **Part One** sets out the factual background in three chapters. Chapter 1 presents Liechtenstein's neutrality in World War II, and describes the fate of the Liechtenstein property in Czechoslovakia and, much later, of the Pieter-van-Laer painting before the German courts. Chapter 2 details the development of the post-war reparations regime and in particular the scope of the Settlement Convention. Chapter 3 shows how Germany's posi-

tion changed vis-à-vis Liechtenstein in the years after the final amendment of the Settlement Convention in 1990.

22. **Part Two** specifies Liechtenstein's claims under three headings, and sets out the remedial consequences of those claims. Chapter 4 concerns Germany's failure, in and after 1995, to respect the sovereignty and neutrality of Liechtenstein, specifically by treating its property as "seized for the purpose of reparation or restitution, or as a result of the state of war". Chapter 5 concerns Germany's failure to respect the rights and interests of Liechtenstein nationals in their property, specifically by treating such property as incorporated in the reparations regime. Chapter 6 concerns Liechtenstein's claims based on Germany's unjust enrichment (*enrichissement sans cause*), and on its unwarranted change of position in and after 1995, causing detriment to Liechtenstein and its nationals. Chapter 7 deals with the legal consequences of these breaches in terms of the declaratory and other relief to which Liechtenstein is correspondingly entitled. There follow Liechtenstein's conclusions and submissions, and a list of the 47 annexes to this Memorial, which are contained in three separate volumes.

# PART ONE

## FACTUAL BACKGROUND

## CHAPTER 1

## LIECHTENSTEIN AND LIECHTENSTEIN PROPERTY

## A. The position of Liechtenstein in and after World War II

1.1 As a small sovereign European State, the Principality of Liechtenstein found itself in a precarious situation on the eve of World War II. Close to Germany, Austria and Switzerland, Liechtenstein had maintained its neutral status since 1806 and continued to concentrate its foreign policy on a preservation of this State in the period after Hitler's seizure of power in the German Reich. Against the backdrop of the expansionism of the German Reich, this was a difficult, but eventually successful balancing act.

1.2 Liechtenstein - unlike almost all other European States - never recognised the extinction of Czechoslovakia following the Munich Agreement of 29 September 1938, by which Germany, Italy, France and Great Britain agreed on the cession of the hitherto Czechoslovakian Sudetenland to the German Reich. Despite having adopted this independent position, Liechtenstein's skilful diplomatic endeavours succeeded in gaining recognition of its neutral status even by Germany.

1.3 On 30 August 1939 - one week after the non-aggression treaty between Germany and the Soviet Union had been sealed by the German Foreign Minister von Ribbentrop and the Soviet Foreign Minister Molotow in Moscow, and two days before Hitler invaded Poland - the Liechtenstein Government proclaimed on behalf of the then Reigning Prince of Liechtenstein that Liechtenstein would maintain "strictest neutrality" in the event of an outbreak of war. The task of informing all Powers that might be involved in a possible conflict of this decision was assigned to the Political Department (Foreign Ministry) of the Swiss Confederation.

1.4 The Liechtenstein Government's note addressed to the Political Department of the Swiss Confederation in Bern on 30 August 1939 (Annex 1) reads as follows:

> *"Seine Durchlaucht der regierende Fürst Franz Josef II. von Liechtenstein haben die fürstliche Regierung beauftragt, dem Eidgenössischen Politischen Departement in Bern zur Kenntnis zu bringen, dass das Fürstentum im Falle eines kriegerischen Konfliktes die strengste Neutralität bewahren wird.*
>
> *Indem die fürstliche Regierung bittet, von dieser Haltung des Fürstentums den an einem allfälligen Konflikt beteiligten Mächten gütigst Kenntnis geben zu wollen, dankt sie im voraus für die allfällige Mühewaltung und benützt auch diesen Anlass, dem Eidgenössischen Politischen Departemente erneut den Ausdruck vorzüglicher Hochachtung auszusprechen."*
>
> Translation[7]:
> "His Serene Reigning Highness, Prince Franz Josef II of Liechtenstein, asked the Prince's Government to inform the Political Department of the Swiss Confederation in Bern that Liechtenstein will maintain strictest neutrality in the event of an outbreak of war.
>
> The Prince's Government would like to ask you to kindly inform all Powers that might be involved in a possible conflict of the Principality's attitude, and would also like to thank you in advance for your effort involved in this respect. The Prince's Government avails itself of this opportunity to renew to the Political Department of the Swiss Confederation the assurance of its high esteem and consideration."

1.5 The Swiss Ambassador Frölicher handed over the Liechtenstein declaration of neutrality together with the Swiss declaration of neutrality, dated 31 August 1939, to the German State Secretary Weizsäcker at the Foreign Office at midday of 1 September 1939. As Frölicher reported back to the Political Department of the Swiss Confederation, the German Reich committed itself to respecting their neutrality. In the *Copie de réception* of 1 September 1939 (Annex 2), the Ambassador Frölicher states:

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[7] As not otherwise stated, all translations have been prepared by Liechtenstein.

> *"Auch Neutralitätserklärung Liechtenstein wurde in zustimmendem Sinne entgegengenommen."*
>
> Translation:
> "Liechtenstein's declaration of neutrality was similarly accepted in an affirmative way."

France, Italy and United Kingdom, made declarations to similar effect.

1.6 In a note dated 1 September 1939 and addressed to the Swiss Ambassador in London, Charles Paravicini, the Foreign Office of the United Kingdom, stated as follows (Annex 3):

> "I have the honour to acknowledge the receipt of your note of the 31st August in which you conveyed to me the text of a declaration by His Serene Highness the Prince of Liechtenstein affirming that in the event of the outbreak of war the Principality of Liechtenstein will maintain the strictest neutrality.
>
> 2. I shall be glad if you will cause His Serene Highness to be informed that His Majesty's Government in the United Kingdom have taken due note of this communication.
>
> 3. His Serene Highness may rest assured that if in the event of a European war, Liechtenstein adopts an attitude of neutrality, His Majesty's Government in the United Kingdom will, in accordance with their traditional policy, be resolutely determined to respect this neutrality, provided that it is respected by other Powers."

1.7 The Italian Ministry of Foreign Affairs made a statement to the same effect in a note addressed to the Swiss Ambassador in Rome, Paul Ruegger, on 4 September 1939 (Annex 4):

> *"Ho l'onore di segnare ricevuta della Vostra Nota in data 1° settembre, relativa alla dichiarazione di neutralità del Principato di Liechtenstein.*

> *Nell'informarVi che il Governo Fascista ha preso atto di tale comunicazione, Vi porgo, Signor Ministro, gli atti della mia alta considerazione.*"
>
> Translation:
> "I have the honour to acknowledge receipt of your note dated 1 September concerning the declaration of neutrality of the Principality of Liechtenstein.
>
> I may inform you that the Fascist Government has taken note of such communication and may assure you, Mr. Ambassador, of my highest consideration."

1.8 In the name of the French Republic, the French Foreign Ministry declared in a note dated 10 September 1939 and addressed to the Swiss Embassy in Paris (Annex 5):

> "A la date du 1er septembre 1939, la Légation de Suisse a bien voulu faire part au Ministère des Affaires Etrangères d'une décision prise par Son Altesse Sérémissime le Prince régnant de Liechtenstein, et aux termes de laquelle, en cas de conflit armé, la Principauté de Liechtenstein observera la plus stricte neutralité.
>
> Le Ministère des Affaires Etrangères a l'honneur d'accuser réception à la Légation de Suisse de sa communication."

1.9 Liechtenstein neutrality was never challenged thereafter, and for the duration of the War.

### B. Seizure of the property of Liechtenstein nationals under the "Beneš Decrees"

1.10 At the end of World War II, in 1945, the former Czechoslovakian President Eduard Beneš returned to Prague from his exile in London. Apart from reconstructing the State of Czechoslovakia which had been destroyed by Hitler Germany, his primary goal was to free his country of German and Hungarian minorities living there. This policy led to the expulsion of more than 2.5 million persons belonging to the German and Hungarian "people" from Czechoslovakia and to the seizure of their property without any compensation.

1.11 The legal mechanism to achieve this purpose in relation to the property of German and Hungarian minorities were so-called presidential decrees, the "Beneš Decrees". Of particular importance were Decrees No. 12 and No. 108.

1.12 Decree No. 12 of 21 June 1945 (Annex 6) concerned the confiscation and accelerated allocation of agricultural property owned by Germans, Hungarians and also by people who have committed treason and acted as enemies of the Czech and Slovak people.[8] The aims of Decree No. 12 were described in the Preamble as follows:

> "*Vycházeje vstřic voláni českých a slovenských rolníků a bezzemků po důsledném uskutěcnení nové pozemkové reformy a veden snahou především jednou pro vždy vzíti českou a slovenskou půdu z rukou cizáckých německých a mad'arských statkářů, jakož i z rukou zrádců republiky a dáti ji do rukou českého a slovenského rolnictva a bezzemků k návrhu vlády ustanovuji:*"
>
> Translation:
> "In order to accommodate Czech and Slovak peasants and people who do not own any land and call for a consistent implementation of a new land reform, and in particular guided by the intention to take Czech and Slovak land once and for all out of the hands of foreign German and Hungarian landowners and also out of the hands of traitors of the Republic, and in order to give it into the hands of the Czech and Slovak peasantry and people not owning any land, I hereby order upon the government's proposal:"

1.13 On the basis of Decree No. 12 all agricultural property of persons regarded as belonging to the German and Hungarian "people" was confiscated. Section 1 (1) of Decree No. 12 provides:

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[8] Offizial Gazette of the Czechoslovakian State, 23 June 1945, pp. 17 *et seq.*

> *"§ 1*
> *(1) S okamžitou platností a bez náhrady se konfiskuje pro účely pozemkové reformy zemědělský majetek, jenž je ve vlastnictví:*
>
> *a) všech osob německé a mad'arské národnosti, bez ohledu na státní příslušnost,*
>
> *b) zrádců a nepřátel republiky jakékoliv národnosti a státní příslušnosti, projevivších toto nepřátelství zejména za krise a války v letech 1938 až 1945,"*
>
> Translation:
> "§ 1
> (1) For the purposes of land reform, agricultural property owned by the following persons is confiscated with immediate effect and without compensation:
>
> a) all persons belonging to the German and Hungarian people, regardless of their nationality
>
> b) persons who have committed treason and acted as enemies of the Republic, regardless of their nationality, and who have shown their hostility in particular during the years of crisis and the war between 1938 and 1945."

1.14 Section 2 of Decree No. 12 contains a definition of persons who were regarded as belonging to the German or Hungarian "people":

> *"§ 2*
> *(1) Za osoby národnosti německé nebo mad'arské jest považovati osoby, které při kterémkoliv sčítání lidu od roku 1929 se přihlásily k německé nebo mad'arské národnosti nebo se staly členy národních skupin nebo útvarů nebo politických stran, sdružujících osoby německé nebo mad'arksé národnosti.*
>
> *(2) Výjimky z ustanovení odstavce 1 budou určeny zvláštním dekretem."*
>
> Translation:
> "§ 2
> (1) Those persons are considered to belong to the German or Hungarian people who declared on the occasion of every census since the year 1929 that they belonged to the German or Hungarian people, or who have become members of national groups or politi-

> cal parties made up of persons belonging to the German or Hungarian people.
>
> (2) Exceptions to the provisions of paragraph 1 will be laid down in a separate Decree."

1.15 The assets subject to confiscation in accordance with Decree No. 12 were very broadly defined. Contrary to the terms of the preamble, they included not only agricultural property in the narrow sense, but the Decree and in particular the implementing provisions issued in relation thereto covered practically all kinds of assets, even though they were in no way related to agricultural business. Section 4 and Section 7 (4) of Decree No. 12 state:

> *"§ 4*
> *Zemědělským majetkem (§ 1, odst. 1) jest rozuměti zemědělskou a lesni půdu, k ni patřici budovy a zařizeni, závody zemědělského průmyslu, sloužici vlastnimu zemědělskému a lesnimu hospodářstvi, jakož i movité přišlušenstvi (živý a mrtvý inventář) a všechna práva, která jsou spojena s držbou zkonfiskovaného majetku anebo jeho části."*
>
> Translation:
> "§ 4
> Agricultural property [§ 1 (1)] means agricultural and forest land which also comprises buildings and installations pertaining thereto, agricultural industrial undertakings used for the owner's agricultural and forestry activities, as well as movable property pertaining thereto (livestock and equipment) and all rights related to the confiscated property or part thereof."
>
> *"§ 7*
> *(4) Konfiskované budovy, zařizeni, sloužici vlastnimu zemědělskému nebo lesnimu hospodářstvi, závody zemědělskeho průmyslu, sady, památnosti, archivy a pod., jakož i všechny konfiskované nemovitosti, pokud nebudou přiděleny veřejnoprávnim subjektům, mohou se přiděliti do vlastnictvi:"*
>
> Translation:
> "§ 7
> (4) Confiscated buildings, facilities serving for actual agricultural or forest management, forest industry enterprises, orchards, monuments, archives, etc., as well as the confiscated buildings, installa-

> tions used for the owner's agricultural or forestry activities, agricultural industrial undertakings, gardens, memorabilia, archives, etc, as well as all confiscated real property unless donated to public entities may be allocated to the ownership of:"

1.16 In addition Decree No. 108 of 25 October 1945 (Annex 7) regarding the Confiscation of Enemy Property and the National Reconstruction Fund deals with the confiscation of non-agricultural property owned by persons belonging to the German or Hungarian people.[9] Section 1 of Decree No. 108 reads as follows:

> *"§ 1 Vymezení konfiskovaného majetku*
>
> *(1) Konfiskuje se bez náhrady - pokud se tak již nestalo - pro Československou republiku majetek nemovitý i movitý, zejména i majetková práva (jako pohledávky, cenné papíry, vklady, práva nehmotná), který ke dni faktického skončení německé a maďarské okupace byl nebo ještě jest ve vlastnictví:*
>
> *1. Německé říše, Království maďarského, osob veřejného práva podle německého nebo maďarského práva, německé strany nacistické, politických stran maďarských a jiných útvarů, organisací, podniků, zařízení, osobních sdružení, fondů a účelových jmění těchto režimů nebo s nimi souvisících, jakož i jiných německých nebo maďarských osob právnických, nebo*
>
> *2. osob fysických národnosti německé nebo maďarské, s výjimkou osob, které prokáží, že zůstaly věrny Československé republice, nikdy se neprovinily proti národům českému a slovenskému a buď se činně zúčastnily boje za její osvobození, nebo trpěly pod nacistickým nebo fašistickým terorem, nebo"*
>
> Translation:
> "§ 1 Scope of confiscated property
>
> (1) Confiscation without compensation shall take effect - as far as this has not been already done - to the benefit of the Czechoslovak Republic in respect of movable and immovable property, including in particular property rights (such as claims, securities, deposits or contributed capital, intangible rights) which were owned

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[9] Official Gazette of the Czechoslovakian State, 25 October 1945, pp. 248 *et seq.*

> to this day of the actual termination of the German and Hungarian occupation or have hitherto been owned by the following parties:
>
> 1. the German Reich, the Kingdom of Hungary, corporate bodies under German or Hungarian public law, the German Nazi Party, the Hungarian political parties and associations of persons, organisations, companies, institutions, associations, funds and special purpose funds of their regimes or connected with them, or other German or Hungarian legal entities, or
>
> 2. natural persons belonging to the German or Hungarian people other than persons who can furnish proof that they remained faithful to the Czechoslovak Republic, have never acted to the detriment of the Czech or Slovak people and either participated actively in the fight for its liberation or suffered under Nazi or Fascist terror, or"

1.17 These Decrees No. 12 and No. 108 were not only applied to former Czechoslovakian citizens of German or Hungarian nationality or to citizens of the German Reich who lived in Czechoslovakia prior to 1938 (so-called *Altreichsdeutsche*), but also to citizens of the Principality of Liechtenstein.

1.18 When the State of Czechoslovakia came into existence in 1918, a number of Liechtenstein families had lived in Bohemia and Moravia for several centuries. All these families held only Liechtenstein citizenship, which has existed since 1806. As far as it is known, none of them also had German nationality. They owned extensive agricultural and forestry property, houses, livestock and equipment used in agriculture, personal furniture and fittings and other valuables, as well as interests in agricultural and industrial business. All Liechtenstein citizens were regarded by Czechoslovakia as persons belonging to the German "people" and their entire property was confiscated without compensation on the basis of the Decrees No. 12 and No. 108.

1.19 In 1945, the government of Liechtenstein drew up a list of families affected by the confiscation measures of the then Czechoslovakian government (Annex 8).

1.20 The confiscations affected in particular the family of the Head of State of the Principality of Liechtenstein, the then Reigning Prince Franz Josef II of Liechtenstein. The family of the Prince of Liechtenstein has been resident in what is today the territory of the Czech Republic for more than 700 years and owned large forests and agricultural lands. In addition, they owned several castles which were home to an important art collection.

1.21 By order of 30 July 1945, the Regional National Committee in Olomouc and the National Committee in Brno confiscated the property of the princely family situated in Czechoslovakia applying Decree No. 12 to the Reigning Prince Franz Josef II of Liechtenstein and to all members of his family. This confiscation was effected even though neither he - nor any other member of the princely family or any other Liechtenstein citizen - had ever declared on the occasion of any census that they belonged to the German or Hungarian "people", neither was he - nor any other Liechtenstein citizen - a member of any organization consisting of persons belonging to the German "people". The Reigning Prince was a citizen and the Head of State of an independent and neutral State, the Principality of Liechtenstein.

1.22 The Reigning Prince filed all possible appeals against the confiscation in accordance with the then existing Czechoslovakian law. The final Court of Appeal, the Administrative Court in Bratislava, rejected his appeals and upheld the decisions of the National Committee in a judgment dated 21 November 1951 (Annex 9). The Czechoslovakian Administrative Court held that

> "*Ve věci samé dospěl žalovaný úřad k závěru, ža stěžovatel je osobou německé národnosti ve smyslu ustanoveni § 1 odst. 1 pism. a) dekretu č. 12/1945, Sb.na základě zjištění, že u nás bylo a jest všcobecně známo, že je německé národnosti.*" (page 3 of the judgment)
>
> Translation:
> "On the merits of the case, the defendant office has come to the conclusion that the Appellant is a person belonging to the German

> people within the meaning of the provisions of Section 1 (1) (a) of the Decree No. 12/1945 Coll., on the grounds of the finding that this has been and is of public knowledge here." (page 4 of the translation)

1.23 Neither the judgment nor the relevant Czechoslovakian measures against Liechtenstein property were recognised by Germany over the next 40 years until 1995. It was only in the context of the Pieter-van-Laer case, when a Liechtenstein item of property was brought to German territory, that Germany first changed its position vis-à-vis Liechtenstein.

## C. The Pieter-van-Laer case

1.24 From 28 August to 17 November 1991, the Wallraf-Richartz-Museum of the Municipality of Cologne staged a large exhibition featuring Dutch painters of the 17th century who were influenced by Italian painting. The exhibition was entitled "*I Bamboccianti - niederländische Malerrebellen im Rom des Barock*" (The Bamboccianti - Dutch rebel painters in Rome during the Baroque period). When Dr. Reinhold Baumstark, then Curator of the private art collection of the present Reigning Prince Hans-Adam II of Liechtenstein and today the Director General of the Bavarian Museums, visited the exhibition, he made an unexpected discovery. There was a painting listed under catalogue number 19.12 entitled "*Szene um einen römischen Kalkofen*" ("Scene set around a Roman lime kiln") painted by Pieter van Laer, the most prominent Dutch member of the so-called *Bamboccianti* group of painters. This painting was described in the catalogue as follows:

> "*19.12* *Szene um einen römischen Kalkofen*
> *Öl auf Leinwand*
> *51,5 x 69,2 cm*
> *Valtice (Feldsberg), Schloß*
> CSFR
> Inv. Nr. 724/597
>
> *Herkunft: Aus der Sammlung des Fürsten von Liechtenstein.*"

Translation:
"19.12. Scene set around a Roman lime kiln
Oil on canvas
51.5 x 69.2 cm
Valtice (Feldsberg), castle
CSRF
Inv. No. 724/597

(Provenance: Collection of the Prince of Liechtenstein)"

The catalogue entry also explained that the painting, which had been part of the Prince of Liechtenstein's collection located at Feldsberg Castle, had been "rediscovered in 1981" after it "had been considered lost for many decades".

1.25 When the painting was examined more closely at the exhibition, a label of the Liechtenstein Gallery in Vienna was detected on the back of the canvas bearing the number 669; there was a further label with numbers relating to Feldsberg Castle, namely object No. 170, inventory No. 129.

1.26 On his return to Vaduz, Dr. Baumstark started his research into the history of this painting. He discovered that the painting had been the subject of a private acquisition by the Prince of Liechtenstein prior to 1712 and since 1888 the painting had been at Feldsberg Castle in Lower Austria where it was registered as object No. 170 under inventory No. 129. Parts of Lower Austria, including the part in which Feldsberg Castle is situated, became part of the territory of the former State of Czechoslovakia in 1918. Feldsberg was subsequently renamed Valtice. At that time, the painting formed part of the private art collection of the then Reigning Prince of Liechtenstein, Franz Josef II, which was located at Valtice. At the end of the war in 1945, major parts of the collection remained at Valtice among other places. After 1945 - when Eduard Beneš returned from exile in London - Prince Franz Josef II of Liechtenstein was no longer allowed access to his estate.

1.27 As a consequence of these discoveries, the present Reigning Prince Hans-Adam II of Liechtenstein, acting as a private person and in his capacity as owner of the painting, filed an application in the *Landgericht Köln* (hereafter "Regional Court of Cologne"). That Court had jurisdiction over the painting while it remained in the exhibition. Prince Hans-Adam II asked the Court to grant an interim injunction to the effect that an order for sequestration of the painting should be granted. He claimed that he was the rightful owner of this painting, as son and sole heir of his late father, Franz Josef II of Liechtenstein. In accordance with his application, the Regional Court of Cologne ordered the painting to be surrendered to the custody of a German bailiff acting as sequestrator until the conclusion of the proceedings on the merits of the case, i.e. until a final court decision was reached on the question of whether Prince Hans-Adam II of Liechtenstein actually had a legally enforceable claim for restoration of the painting.

1.28 In the subsequent proceedings on the merits, Prince Hans-Adam II claimed from the Municipality of Cologne that the painting should be finally returned to him as its rightful owner. At this point the Brno National Historical Monuments Office - acting as a body of the State of Czechoslovakia which still existed at the time - intervened in support of the Municipality of Cologne, and the whole lawsuit lasted for more than eight years. As it turned out during the legal proceedings, all traces of this painting had been lost for some time, but in the end it was determined to have formed part of the assets that had been confiscated as German assets by the then State of Czechoslovakia on the basis of Decree No. 12 (Annex 6).

1.29 German civil courts, supported by the *Bundesverfassungsgericht* (hereafter "Federal Constitutional Court"), dismissed the Prince's claim, holding that German courts had no jurisdiction in the case. The courts held that Germany was bound by a treaty vis-à-vis the Allies not to raise objections under substantive law against expropriation measures which were taken against German external assets for the purpose of paying German reparations, nor to hear cases relating to such measures before German courts. The German courts classified Liechtenstein property as German assets in this context, and thereby included the property of Liechtenstein citizens into the post-war reparations regime. Subsequently the German government confirmed and adopted this position in general terms. This is the basis of Liechtenstein's complaint.

# CHAPTER 2

# THE POST-WAR REPARATIONS REGIME

## A. Introduction

2.1 The present dispute has to be seen in the context of the reparations regime, established by a number of treaties after the end of World War II. In general, these treaties were premised upon the duty to make reparations for losses suffered as a result of the war. For such reparation purposes, the Allied and Associated Powers were entitled to use both property belonging to Germany as a State and property belonging to German nationals. This included also the property of German nationals located on foreign territory. Germany was further obliged to compensate those German nationals whose property was affected. Thus responsibilities for reparations were not ultimately imposed on private German citizens but on the German State. The loss of German external assets, i.e. German private properties which were expropriated for reparation purposes, was to be compensated for by Germany so as to achieve this result.

2.2 The post-war reparations regime was imposed by the Allied and Associated Powers. These measures were implemented in the period prior to the termination of the occupation. Subsequently, these measures were implemented by Germany itself, in particular pursuant to the Settlement Convention to which Germany was a party.

## B. The measures taken by the Allied and Associated Powers

2.3 Even before the surrender of the German High Command on 8 May 1945,[10] the governments of the Allied Powers at their meeting in Yalta in February 1945 determined German's obligation to make reparations. Subsequently, after the military surrender of Germany and the assumption of supreme authority over

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[10] Act of Military Surrender, Berlin, 8 May 1945, United States of America, Executive Agreement Series 502; 59 Stat. 1857; Official Gazette of the Control Council for Germany, Supplement No. 1, p. 6.

Germany by the Allied Powers[11] (Annex 10), this regime was further developed by the Protocol of Potsdam of 2 August 1945 and by the Agreement of Paris of 14 January 1946.

### 1. The Yalta Protocol of 11 February 1945

2.4 In the Protocol of Proceedings of the Crimea Conference (Yalta Protocol) (Annex 11), which took place from 4 to 11 February 1945,[12] the heads of the governments of the United States of America, the United Kingdom and the Union of Soviet Socialist Republics stated that Germany had an obligation to make reparations. Section 1 of the Protocol reads as follows:

> "1. Germany must pay in kind for the losses caused by her to the Allied nations in the course of the war. Reparations are to be received in the first instance by those countries which have borne the main burden of the war, have suffered the heaviest losses and have organised victory over the enemy."

2.5 According to Section 2 of the Protocol, reparation in kind was to be exacted from Germany in three forms, of which the following is most relevant:

> "(a) Removals within two years from the surrender of Germany or the cessation of organized resistance from the national wealth of Germany located on the territory of Germany herself as well as outside her territory (equipment, machine-tools, ships, rolling-stock, German investments abroad, shares of industrial, transport and other enterprises in Germany, etc.), these removals to be carried out chiefly for purpose of destroying the war potential of Germany."

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[11] Declaration regarding the Defeat of Germany and the Assumption of Supreme Authority with respect to Germany by the Governments of the United States of America, the Union of Soviet Socialist Republics, the United Kingdom and the Provisional Government of the French Republic, Berlin, 5 June 1945, *United Nations Treaty Series*, No. 230; Official Gazette for the Control Council for Germany, Supplement No. 1, pp. 7 *et seq.*

[12] Protocol of the Proceedings of the Crimea Conference, British Command Paper, Cmd. 7088 (1947).

Thus the Yalta Protocol covered property located on the German territory as well as property outside of it (German external assets).

### 2. The Potsdam Protocol of 2 August 1945

2.6 On 2 August 1945, the heads of governments of the United States of America, the United Kingdom and the Union of Soviet Socialist Republics met in Potsdam in order to prepare the peace settlement in Europe. As a result of this meeting, the Potsdam Protocol (Annex 12) provided for a division of the assets concerned into two parts: a "Western zone" which would satisfy reparation claims of the Western allies and an "Eastern zone" as regards reparation claims from the Union of Soviet Socialist Republics.[13]

2.7 Accordingly, Chapter IV (1) stated as regards reparation claims of the Union of Soviet Socialist Republics:

> "1. Reparation claims of the U.S.S.R. shall be met by removals from the zone of Germany occupied by the U.S.S.R., and from appropriate German external assets."

2.8 Chapter IV (3) concerned reparation claims of the Western allies as well as other countries. It reads as follows:

> "3. The reparation claims of the United States, the United Kingdom and other countries entitled to reparations shall be met from the Western Zones and from appropriate German external assets."

2.9 The Protocol aimed solely at dividing German assets into two parts. It left open the question of which countries - other than the Allied Powers which were expressly named - were entitled to reparations.

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[13] Official Gazette of the Control Council for Germany, Supplement No. 1, pp. 13 *et seq.*.

### 3. The Paris Agreement of 14 January 1946

2.10 The Agreement on Reparations from Germany, on the Establishment of an Inter-Allied Agency and on the Restitution of Monetary Gold, signed in Paris on 14 January 1946 (the Paris Agreement) (Annex 13) concerned the allocation of German reparations to 18 creditor States, including Czechoslovakia, and their respective shares.[14] German reparations were divided into two categories. In Category A were included "all forms of German reparation except those included in Category B". In Category B were included "all industrial and other capital equipment removed from Germany, and merchant ships and inland water transport". Each signatory government was entitled to a *pro rata* share of the total value of reparations. Czechoslovakia was entitled to a share of 3 % of Category A reparations and 4.3 % of Category B reparations. An Inter-Allied Reparation Agency (IARA) was set up to allocate German reparations among the signatory states according to their respective shares.

2.11 As regards German external property, Part I Article 6 of the Paris Agreement, provided as follows:

> "A. Each Signatory Government shall, under such procedures as it may choose, hold or dispose of German enemy assets within its jurisdiction in manners designed to preclude their return to German ownership or control and shall charge against its reparation share such assets (net of accrued taxes, liens, expenses of administration, other in *rem* charges against specific items and legitimate contract claims against the German former owners of such assets).
>
> B. The Signatory Governments shall give to the Inter-Allied Reparation Agency all information for which it asks as to the value of such assets and the amounts realised from time to time by their liquidation.

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[14] Agreement on Reparation from Germany, on the Establishment of an Inter-Allied Reparation Agency and on the Restitution of Monetary Gold, Paris, 14 January 1946, *United Nations Treaty Series*, No. 8105.

> C. German assets in those countries which remained neutral in the war against Germany shall be removed from German ownership or control and liquidated or disposed of in accordance with the authority of France, the United Kingdom and the United States of America, pursuant to arrangements to be negotiated with the neutrals by these countries. The net proceeds of liquidation or disposition shall be made available to the Inter-Allied Reparation Agency for distribution on reparation account.
>
> D. In applying the provisions of paragraph A above, assets which were the property of a country which is a member of the United Nations or its nationals who were not nationals of Germany at the time of the occupation or annexation of this country by Germany, or of its entry into war, shall not be charged to its reparation account. It is understood that this provision in no way prejudges any questions which may arise as regards assets which were not the property of a national of the country concerned at the time of the latter's occupation or annexation by Germany or of its entry into war.
>
> E. The German enemy assets to be charged against reparation shares shall include assets which are in reality German enemy assets, despite the fact that the nominal owner of such assets is not a German enemy. Each Signatory Government shall enact legislation or take other appropriate steps, if it has not already done so, to render null and void all transfers made, after the occupation of its territory or its entry into war, for the fraudulent purpose of cloaking German enemy interests, and thus having them harmless from the effect of control measures regarding German enemy interests.
>
> F. The Assembly of the Inter-Allied Reparation Agency shall set up a Committee of Experts in matters of enemy property custodianship in order to overcome practical difficulties of law and interpretation which may arise. The Committee should in particular guard against schemes which might result in effecting fictitious or other transactions designed to favour enemy interests, or to reduce improperly the amount of assets which might be allocated to reparation."

Thus, in defining the notion of German external assets, an "enemy association" was indispensable.

2.12 It was agreed that reparations were to be made through the IARA with its seat in Brussels. Reparations in the sense of the Paris Agreement were those reparations which were notified to the Agency. As stated in Part I Article 6 A., it was left up to the Signatory States how to hold and dispose of German enemy assets located on their territory in order to prevent their return to German ownership. The assets were to be charged against the respective reparation share. Czechoslovakia, as one of the parties to the Paris Agreement, notified an amount of only US$189,263.00 to IARA for German external assets which were seized under the reparations regime.[15]

### C. Implementation of the agreements of the Allied and Associated Powers

2.13 In implementation of the above mentioned agreements, two laws are of particular importance, Control Council Law No. 5 and Allied High Commission Law No. 63.

2.14 The Control Council was established by the Allied Powers. After Germany's surrender on 8 May 1945, the four powers assumed supreme authority in and over Germany. It is stated in the first paragraph of the Allied Declaration regarding the Defeat of Germany and the Assumption of Supreme Authority by Allied Powers of 5 June 1945 (Annex 10).

> "The German armed forces on land, at sea and in the air have been completely defeated and have surrendered unconditionally and Germany, which bears responsibility for the war, is no longer capable of resisting the will of the victorious Powers. The unconditional surrender of Germany has thereby been effected, and Germany has become subject to such requirements as may now or hereafter be imposed upon her."

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[15] I. Seidl-Hohenveldern, Comment on the decision of the Federal Constitutional Court of Justice of 29 January 1953, *Neue Juristische Wochenschrift* 1953, p. 1389 *et seq*; H. Slapnicka, Die rechtlichen Grundlagen für die Behandlung der Deutschen und der Magyaren in der Tschechoslowakei 1945 bis 1948, in: R.G. Plaschka (ed.), "*Nationale Frage und Vertreibung in der Tschoslowakei und Ungarn*", 1938-1948, Verlag der Österreichischen Akademie der Wissenschaften, Wien, 1997, p. 17.

2.15 The fifth paragraph concerns the assumption of supreme authority over the territory of Germany:

> "The Governments of the United States of America, the Union of Soviet Socialist Republics and the United Kingdom, and the Provisional Government of the French Republic, hereby assume supreme authority with respect to Germany, including all the powers possessed by the German government, the High Command and any state, municipal, or local government or authority. The assumption, for the purposes stated above, of the said authority and powers does not effect the annexation of Germany."

2.16 Germany was divided into four zones which were administered respectively by the supreme military commanders of the four powers. They dealt jointly, through the Inter-Allied Control Council, with all matters relating to the territory as a whole including reparations. External assets taken as a reparation measure were subject to Control Council Law No. 5.

2.17 After the Soviet Union had left the Control Council, the Allied High Commission was set up. It consisted of representatives of the three Western powers: the United States of America, the United Kingdom and the French Republic. Even after the three occupying powers of the Western zone had accorded to the Federal Republic limited power of self-government in the occupation statute of 10 April 1949,[16] some issues, including reparation, remained in the competence of the Allied High Commission. Law No. 63 aimed at clarifying the status of German external assets taken by way of reparation.

### 1. Law No. 5 of the Control Council of 30 October 1945

2.18 Law No. 5 of the Control Council concerning "vesting and marshalling of German external assets" of 30 October 1945 (Annex 14) vested German external assets in a Commission established by the law.[17] Even though the law was intended to make provisions in particular for assets located in neutral States, it is of particular importance since relevant terms such as "German nationality" and "German property" were defined by the Allied Powers in that Law.

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[16] Official Gazette of the Allied High Commission, No. 1, 10 April 1949, p. 2.

2.19 Article IX defines the scope of application of the Law as follows:

> "Articles II and III of this Law shall not apply to assets subject to the jurisdiction of the United Kingdom, British Dominions, India, Colonies and Possessions, the Union of Soviet Socialist Republics, the United States, France and any other United Nations determined by the Control Council."

2.20 Article III of the Control Council Law deals with property located outside Germany and the definition of German nationality. It reads as follows:

> "Article III
>
> All rights, titles and interests in respect of any property outside Germany which is owned or controlled by any person of German nationality outside Germany or by any branch of any business or corporation or other legal entity organised under the laws of Germany or having its principal place of business in Germany are hereby vested in the Commission.
>
> For the purpose of this Article the term "any person of German Nationality outside Germany" shall apply only to a person who has enjoyed full rights of German citizenship under Reich Law at any time since 1 September 1939 and who has at any time since 1 September 1939 been within any territory then under the control of the Reich Government but shall not apply to any citizen of any country annexed or claimed to have been annexed by Germany since 31 December 1937."

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[17] Official Gazette of the Control Council for Germany, No. 2, 30 November 1945, p. 27.

2.21 The term "property" was defined in Article X b) in broad terms as follows:

> "The term "property" shall include all movable and immovable property and all rights or interests in or claims to such property whether matured or not, including all property, rights, interests or claims transferred to or held by third parties as nominees or trustees and all property, rights, interests or claims transferred by way of gift or otherwise or for consideration, express or implied, but not including the rights or interests of third parties to a bona fide sale for full consideration, and shall include but shall not be limited to buildings and lands, goods, wares and merchandise, chattels, coin, bullion, currency, deposits, accounts or debts, shares, claims, bills of lading, warehouse receipts, all kinds of financial instruments whether expressed in Reichsmarks or in any foreign currency, evidences of indebtedness or ownership of property, contracts, judgments, rights in or with respect to patents, copyrights, trademarks, etc., and in general property of any nature whatsoever."

## 2. Law No. 63 of the Council of the Allied High Commission of 31 August 1951

2.22 By Law No. 63 of the Council of the Allied High Commission (Annex 15), the three Western allies intended to clarify the status of German external assets.[18] The preamble reads as follows:

> "WHEREAS international agreements have been entered into by the Allied Powers with respect to the liquidation of German external assets and the removal of property from Germany for the purpose of reparation,
>
> WHEREAS the Declaration of London of January 5, 1943, reserved the rights of countries occupied by Germany during the war to the restitution of property which was looted or wrongfully removed from their territories,
>
> WHEREAS property has been or may be transferred, liquidated or delivered in accordance with the aforesaid agreements and declaration and

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[18] Law No. 63 clarifying the status of German external assets and of other property taken by way of reparation or restitution, Official Gazette of the Allied High Commission, No. 8, p. 1107.

> WHEREAS it appears expedient to give recognition by legislation to, and to define certain legal consequences of, the divesting of title to the aforesaid property,
>
> NOW THEREFORE for the purpose of quieting title and of preventing unwarranted disputes and litigations;
>
> The Council of the Allied High Commission enacts as follows:"

2.23 The law addresses German external assets in Article 1 (1) ( a) as follows:

> "any property which, on or prior to the effective date of this Law, was located in any foreign country and German-owned and which, after September 1, 1939, has been or will be transferred or liquidated under the law of such country, or under the law of any other country by agreement with the former country
>
> (i) pursuant to measures taken in connection with the war against Germany by the government of any country which has adhered to the United Nations Declaration of January 1, 1942, or
>
> (ii) pursuant to any agreement, accord or treaty regarding the disposition of German external assets which has been or will be concluded with the participation of France, the United Kingdom and the United States of America, or
>
> (iii) pursuant to measures taken in satisfaction of claims against Germany, or
>
> (iv) pursuant to reparation measures in Japan or Tangier;"

2.24 Article 3 enacted the non-objection and inadmissibility rule according to which the seizure of property for reparation purposes shall not be objected to and any claims relating thereto shall be inadmissible:

> "No claim or action based on or arising out of the transfer, liquidation or delivery of property to which this law extends shall be admissible:
>
> (a) against any person who has transferred or acquired title to or possession of such property or against such property,

> (b) against any international agency, any government of a foreign country, or any person acting in conformity with the instructions of such agency or government."

2.25 Germany in the meaning of the Law was the territory of the former Reich on 31 December 1937. Article 4 (a) and (b) state:

> "For the purposes of this Law:
>
> (a) the term "foreign country" means any country except Germany and the countries listed in the Schedule to this Law;
>
> (b) the term "Germany" means the territory of the former Reich on December 31, 1937."

2.26 Neither Liechtenstein nor Czechoslovakia was listed in the Schedule to the Law. Each was accordingly a "foreign country" in the meaning of Article 4 (a). German assets located in Czechoslovakia were German external assets.

### D. The Settlement Convention of 26 May 1952

2.27 The Convention on the Settlement of Matters arising out of the War and the Occupation (Settlement Convention) (Annex 16) is one of four Conventions that were signed at Bonn on 26 May 1952.[19] These Conventions, to which the three Western allies as well as the Federal Republic of Germany were parties, were designed to end the occupation regime in the Western zone. However, the reparations regime established by the measures of the Allied and Associated Powers was continued. The other three conventions were:

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[19] Convention on the Settlement of Matters arising out of the War and the Occupation, signed by the United Kingdom, the French Republic, the United States of America and Federal Republic of Germany, Bonn, 26 May 1952, *United Nations Treaty Series*, No. 4762.

- the Convention on Relations between the Three Powers and the Federal Republic of Germany (hereafter the "Relations Convention");[20]
- the Convention on the Rights and Obligations of Foreign Forces and their Members in the Federal Republic of Germany;[21] and
- the Finance Convention.[22]

The conventions did not enter into force in their original form. They were subsequently amended by five schedules to the Protocol on the Termination of the Occupation Regime in the Federal Republic of Germany, one of the agreements signed in Paris on 23 October 1954.[23] The amended Conventions entered into force on 5 May 1955.

2.28 In Article 1 (1) of the Relations Convention (Annex 17), it is stated:

> "1. On the entry into force of the present Convention the United States of America, the United Kingdom of Great Britain and Northern Ireland and the French Republic (hereinafter and in the related conventions sometimes referred to as "the Three Powers") will terminate the Occupation régime in the Federal Republic, revoke the Occupation Statute and abolish the Allied High Commission and the Offices of the Land Commissioners in the Federal Republic."

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[20] Convention on Relations between the Three Powers and the Federal Republic of Germany, signed by the United Kingdom, the French Republic, the United States of America and the Federal Republic of Germany, Bonn, 26 May 1952, *United Nations Treaty Series*, No. 4759.

[21] *United Nations Treaty Series*, No. 4760.

[22] *United Nations Treaty Series*, No. 4761.

[23] Protocol between the United Kingdom of Great Britain and Northern Ireland, the United States of America, the French Republic and the Federal Republic of Germany on the Termination of the Occupation Regime in the Federal Republic of Germany, Paris, 23 October 1954, *United Nations Treaty Series*, No. 4758.

As regards sovereignty it is stated in paragraph 2 of this Article:

> "2. The Federal Republic of Germany shall have accordingly the full authority of a sovereign State over its internal and external affairs."

However, according to Article 2, the three Western allies retained their rights relating to Germany as a whole. It is stated:

> "Article 2
>
> In view of the international situation, which has so far prevented the re-unification of Germany and the conclusion of a peace settlement, the Three Powers retain the rights and the responsibilities, heretofore exercised or held by them, relating to Berlin and to Germany as a whole, including the re-unification of Germany and a peace settlement. The rights and responsibilities retained by the Three Powers relating to the stationing of armed forces in Germany and the protection of their security are dealt with in Articles 4 and 5 of the present Convention."

2.29 Reparation measures are dealt with in Chapter Six of the Settlement Convention. These were intended to be of a provisional nature. In Article 1 of Chapter Six it is stated:

> "1. The problem of reparation shall be settled by the peace treaty between Germany and its former enemies or by earlier agreements concerning this matter. The Three Powers undertake that they will at no time assert any claim for reparation against the current production of the Federal Republic.
>
> 2. Pending the final settlement envisaged in paragraph 1 of this Article, the following provisions shall apply."

2.30 With the termination of the occupation regime, Law No. 5 of the Control Council (Annex 14) was deprived of its effect in the Western zone. However, it was not revoked as a law of the four Allied Powers. The Federal Republic agreed not to repeal or amend Law No. 63 of the Allied High Commission

(Annex 15). Article 2 of Chapter Six of the Settlement Convention (Annex 16) reads as follows:

> "Control Council Law No. 5 is deprived of effect in the Federal territory, except in respect of the countries listed in the Schedule to Allied High Commission Law No. 63, as amended by Decision No. 24 of the Allied High Commission, but shall not be further deprived of effect or amended without the consent of the Three Powers. The Federal Republic will not repeal or amend Law No. 63 except with the consent of the Three Powers. However, paragraph 1 of Article 6 of Law No. 63 shall be deemed to be repealed and paragraph 2 to be amended to provide that the powers therein conferred upon the Allied High Commission may be exercised by the Federal Government. The Federal Republic undertakes that appropriate decisions under Article 6 of Law No. 63, as so amended, removing the countries from the list in the Schedule thereto shall be issued after the Three Powers have consented."

2.31 As regards reparation measures, the non-objection and inadmissibility rule is stated in Article 3 (1) and (3):

> "1. The Federal Republic shall in the future raise no objections against the measures which have been, or will be, carried out with regard to German external assets or other property, seized for the purpose of reparation or restitution, or as a result of the state of war, or on the basis of agreements concluded, or to be concluded, by the Three Powers with other Allied countries, neutral countries or former allies of Germany.
>
> 2. The Federal Republic shall abide by such provisions regulating German external assets in Austria as are set forth in any agreement to which the Powers now in occupation of Austria are parties or as may be contained in the future State Treaty with Austria.
>
> 3. No claim or action shall be admissible against persons who shall have acquired or transferred title to property on the basis of the measures referred to in paragraph 1 and 2 of this Article, or against international organizations, foreign governments or persons who have acted upon instructions of such organizations or governments."

2.32 Article 5 of Chapter Six stated that Germany is obliged to compensate the former owners of property seized. It reads as follows:

> "The Federal Republic shall ensure that the former owners of property seized pursuant to the measures referred to in Articles 2 and 3 of this Chapter shall be compensated."

2.33 Article 4 expressly provided for the possibility of Germany negotiating agreements with all countries which had been at war with Germany since 1 September 1939 regarding German external assets which had not been transferred or liquidated. However, this did not apply to members of IARA, and thus not to Czechoslovakia which was a member of IARA.

2.34 Negotiations with the member countries of IARA, including Czechoslovakia, were only possible so far as specific assets were concerned. Article 4 (2) of Chapter Six of the Settlement Convention provides as follows:

> "2. Moreover, the Federal Republic may negotiate agreements with the member countries of IARA, provided such agreements relate only to:
>
> (a) property of the types which member countries of the IARA may, under Part III of the IARA accounting rules, voluntarily exclude from the charge to be made under Part II of the rules;
>
> (b) securities of German issue expressed in Reichsmarks;
>
> (c) pensions;
>
> (d) a final date for sequestration of German property in countries in which such a date has not yet been determined."

2.35 The Settlement Convention did not terminate the reparation regime. On the contrary, the non-objection and inadmissibility rule first enacted by Law No. 63 of the Allied High Commission was upheld. The Federal Republic agreed not to object to the seizure of property for reparation purposes and to consider any claims relating thereto to be inadmissible. It also agreed to compensate the former owners of the property concerned.

### E. Further development of the Settlement Convention

2.36 The situation remained unchanged until 1990. Germany's reunification created a situation which required amendments to the existing regime. However, a final settlement of the reparation issues was not achieved. To the contrary, certain provisions of the Settlement Convention remained in force.

#### 1. The Treaty on the Final Settlement with respect to Germany of 12 September 1990 (Two-Plus-Four-Treaty)

2.37 On 12 September 1990, the Treaty on the Final Settlement with Respect to Germany (hereafter the "Two-Plus-Four-Treaty") (Annex 18) was signed in Moscow by the German Republic, the German Democratic Republic, the French Republic, the Soviet Union, the United Kingdom and the United States of America.[24] The Treaty aimed at finally ending the post-war regime by conferring upon Germany full sovereignty over its internal and external affairs. As stated in the 13th paragraph of the preamble:

> "Recognizing that thereby, and with the unification of Germany as a democratic and peaceful state, the rights and responsibilities of the Four Powers relating to Berlin and Germany as a whole lose their function;"

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[24] Treaty on the Final Settlement with Respect to Germany, signed by the Federal Republic of Germany, the German Democratic Republic, the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America, Moscow, 12 September 1990, *United Nations Treaty Series*, No. 29226, Federal Law Gazette (*Bundesgesetzblatt*) 1990 II, p. 1318.

2.38 Consequently, Article 7 of the Treaty states that:

> "(1) The French Republic, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America hereby terminate their rights and responsibilities relating to Berlin and to Germany as a whole. As a result, the corresponding, related quadripartite agreements, decisions and practises are terminated and all related Four Power institutions are dissolved.
>
> (2) The united Germany shall have accordingly full sovereignty over its internal and external affairs."

The Treaty thus ended the post-war regime by terminating the rights of the four Allied Powers and acknowledging Germany's full sovereignty.

### 2. The Exchange of Notes of 27 and 28 September 1990

2.39 Following an Exchange of Notes on 27 and 28 September 1990 (Annex 19),[25] an agreement was reached between the governments of the Federal Republic of Germany and the three Western Allies concerning the Relations Convention as well as the Settlement Convention (Annex 16). In principle, it was agreed that both Conventions would terminate on the date of the entry into force of the Two-Plus-Four-Treaty. It is stated in the Exchange of Notes:

> "1. The Convention on Relations between the Three Powers and the Federal Republic of Germany of 26 May 1952 (as amended by Schedule I to Protocol on the Termination of the Occupation Régime in the Federal Republic of Germany, signed at Paris on 23 October 1954) ("the Relations Convention") shall be suspended upon the suspension of the operation of quatripartite rights and responsibilities with respect to Berlin and to Germany as a whole, and shall terminate upon the entry into force of the Treaty on the

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[25] Exchange of Notes constituting an Agreement concerning the Relations Convention and the Settlement Convention between the Three Powers and the Federal Republic of Germany of 27/28 September 1990, *United Nations Treaty Series*, No. 28492, Federal Law Gazette (*Bundesgesetzblatt*) 1990 II, p. 1386.

> Final Settlement with respect to Germany, signed at Moscow on 12 September 1990.
>
> 2. Subject to paragraph 3 below, the Convention on the Settlement of Matters arising out of the War and the Occupation of 26 May 1952 (as amended by Schedule IV to the Protocol on the Termination of the Occupation Régime in the Federal Republic of Germany, signed at Paris on 23 October 1954) ("the Settlement Convention") shall be suspended and shall terminate at the same time as the Relations Convention; this also applies to the letters and exchanges of letters relating to the Relations Convention and the Settlement Convention."

However, it was agreed that the Settlement Convention shall partly remain in force. In particular Article 3 (1) and (3) of Chapter Six of the Settlement Convention. The relevant text of paragraph 3 of the Exchange of Notes reads as follows:

> "The following provisions of the Settlement Convention shall, however, remain in force:
> ...
> Chapter Six:
> Article 3, paragraphs 1 and 3
> ..."

2.40 The Government of the Federal Republic expressly assumed the obligation to adhere to the Settlement Convention. It is stated in paragraph 4 (a) of the Exchange of Notes:

> "4. (a) The Government of the Federal Republic of Germany declares that it shall take all adequate measures to ensure that the provisions of the Settlement Convention which remain in force shall not be circumvented in the territory of the present German Democratic Republic and in Berlin."

2.41 The non-objection and inadmissibility rule of Article 3 (1) and (3) of Chapter Six of the Settlement Convention was thereby confirmed. It lost its provisional character and became final. By virtue of the revocation of Article 1 of the Settlement Convention, the rule (which had hitherto been regarded as having only a temporary effect, pending the conclusion of a peace treaty) acquired a permanent character.

# CHAPTER 3

# GERMANY'S CHANGE OF POSITION

## A. Introduction

3.1 Once the occupation status had come to an end and the Allied Powers had restored to Germany competence over its internal and external affairs, Germany was obliged to accept the legal framework established by the Allied Powers after the end of the war as a given fact. Germany consistently stressed, however, that its consequent acceptance of the confiscation of German external assets for purposes of reparations as a given fact in no way implied a recognition of these measures. Germany always referred to the preliminary nature of all reparation measures and in particular the Settlement Convention and maintained that a final settlement of all questions related to World War II and the post-war regime could only be dealt with by a peace treaty. It was never suggested that Liechtenstein, as a neutral State, was subject to the reparation system as described above.

3.2 This position changed in the 1990s, when Germany, contrary to its invariable practice hitherto

(a) as a consequence of a decision of its highest constitutional court, for the first time included Liechtenstein assets among "German external assets" within the meaning of Article 3 of Chapter Six of the Settlement Convention and

(b) by entering into the Exchange of Notes of 27/28 September 1990, permitted the conversion of the hitherto temporary reparations regime into a final settlement and thereby terminated Germany's obligation to compensate former owners of property seized for the purpose of reparation.

## B. Germany's former position

3.3 Germany consistently held the opinion that the seizure of German external property for reparation purposes was contrary to international law. When Germany became a party to the Settlement Convention, however, it agreed to the non-objection and inadmissibility rule provided for in Article 3 (1) of Chapter Six of the Settlement Convention. Thereby, Germany accepted that German external assets were used for the purpose of reparations. It agreed not to raise any objections to the measures. Although the German Government was well aware of the fact that the Western Allied Powers were of the opinion that the title of ownership had been lost with respect to German assets properly so-called (i.e., that there has been a divesting of title), it expressly avoided recognising these measures. The property question was thus left open.

### 1. Germany regarded seizure of German external assets as unlawful

3.4 In the opinion of Germany, the seizure of German external property as a consequence of World War II was unlawful, on the grounds that such measures could only be imposed by a peace treaty. No such peace treaty was concluded after the end of World War II.

3.5 Accordingly, in 1952 the Committee of the Federal Parliament for the Occupation Statute and Other External Affairs described the seizure of German external assets as "advance reparations" (Annex 20).[26] The relevant sentences of the report read as follows:

> "*Völkerrechtlich ist die Auferlegung von Reparationen jedoch nur durch einen Friedensvertrag möglich. Die Maßnahmen gegen das deutsche Eigentum verstoßen gegen die Bestimmungen der Haager Landkriegsordnung von 1907… Die Verletzung des völkerrechtli-*

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[26] Report of the Committee of the Federal Parliaments for the Occupation Statute and Other External Affairs, Official Gazette of the Parliament (*Bundestags-Drucksache*), No. 3389, p. 6.

> *chen Grundsatzes, daß Reparationen nur von dem unterlegenen Staat und nicht von einer willkürlich herausgegriffenen Gruppe seiner Staatsangehörigen zu leisten seien, ist bis zur letzten Folgerung durchgeführt worden."*
>
> Translation:
> "In international law the imposition of reparations is however only possible by means of a peace treaty. The measures against German property contravene the provisions of the Hague Convention IV Respecting the Laws and Customs of War on Land of 1907 ...... The contravention of the basic principle of international law that reparations have to be made by the defeated country and not from a group of its nationals chosen at random, has been carried out to the full extent."

3.6 The German Government was of the opinion that title to ownership was not affected by what it regarded as unlawful expropriation measures. For example, when the question arose as to whether ownership of securities had passed following their confiscation for reparation purposes, the Secretary of State of the Federal Ministry of Finance drew the attention of the Federal Parliament to the fact that seizures carried out by the Allied and Associated Powers or other States outside German territory could not be recognised as a valid basis for acquiring title to a security. Therefore, the Czechoslovakian State did not acquire the ownership of securities that were expropriated and, consequently, could not have these securities registered under the Law on Validation of Securities (*Wertpapierbereinigungsgesetz*) of 19 August 1949.[27] On 22 February 1951, the Secretary of State of the Federal Ministry of Finance stated as follows (Annex 21):[28]

> *"Eigentumsübergänge nach dem 1. Januar 1945 aufgrund von Maßnahmen der Hohen Hand werden nur anerkannt, wenn es sich um rechtswirksame Maßnahmen der Behörden oder der Besatzungsmächte des Währungsgebietes handelt. Andere Maßnahmen von Hoher Hand, also von Behörden und Besatzungsmächten au-*

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[27] Law Gazette of the Administration of the United Economic Area (*Gesetzblatt der Verwaltung des Vereinigten Wirtschaftsgebietes*) 1949, p. 295.

[28] Stenographer's Report of the 120th Session of the Federal Parliament, 22 February 1951, p. 4582.

> *ßerhalb des Währungsgebietes, werden nicht anerkannt. Danach müssen die Anmeldungen des tschechoslowakischen Staates, soweit sie enteignete Wertpapiere sudetendeutscher Eigentümer betreffen, abgelehnt werden."*
>
> Translation:
> "Transfer of property after 1 January 1945 because of measures of the 'High Hand'[29] shall only be recognised if these are legally effective measures of the authorities or the occupying powers of the currency area.[30] Other measures of the 'High Hand', that is to say of authorities and occupying powers outside the currency area, shall not be recognised. Accordingly the registrations of the Czechslovakian State inasmuch as they contain expropriated securities of Sudeten German owners, will have to be refused."

## 2. Germany acknowledged the reparation measures only as a fact and did not recognize them

3.7 During the negotiation of the Settlement Convention, Germany was obliged to accept the reparation measures as a given fact. However, it carefully avoided recognizing them. Accordingly, in its Explanatory Memorandum to the Federal Parliament on the Settlement Convention of 21 July 1952 (Annex 22),[31] the Federal Government interpreted the Settlement Convention in Chapter Six on reparations as follows:

> *"Wie in den Friedensverträgen, die den ersten Weltkrieg beendeten, haben auch die Siegermächte des zweiten Weltkrieges in den 6 bisher geschlossenen Friedensverträgen das in ihrem Gebiete belegene private Auslandsvermögen der besiegten Nationen zu Reparationszwecken herangezogen. Das gleiche ist für Deutschland im Potsdamer Abkommen von den Großmächten vereinbart worden. Kontrollratsgesetz Nr. 5 und AHK-Gesetz Nr. 63 sind zur Durchführung dieser Vereinbarungen erlassen worden, und 19 alliierte Staaten haben das Pariser interalliierte Reparationsabkommen vom 14. Januar 1946 geschlossen.*

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"High Hand" means the Allied Powers.

"Currency area" is the geographical area in which the German Mark was used.

Explanatory Memorandum to the Settlement Convention, Annex 4 to the Official Gazette of the Federal Parliament (*Bundestags-Drucksache*), No. 3500, 21 July 1952, pp. 54 -56.

*Die Verwendung des deutschen Auslandsvermögens für Reparationszwecke durch internationale Abkommen und durch Gesetze der Besatzungsmächte war als eine harte Tatsache hinzunehmen. Es mußte darauf ankommen, diese internationalen Abkommen und Gesetze nach Möglichkeit aufzulockern. Dies dürfte im wesentlichen gelungen sein.*

...

*Eine Anerkennung der interalliierten Verträge und der Gesetze der Besatzungsmächte ist in dem Vertrage vermieden worden. Die Bundesrepublik erklärte nur, in Zukunft keine Einwendungen gegen die Enteignungsmaßnahmen zu erheben (Artikel 3 Absatz (1)). Darin liegt ein deutlicher Hinweis auf den bisher geltend gemachten Rechtsvorbehalt und nur ein Verzicht auf dessen künftige Wiederholung, jedenfalls keine Anerkennung der Rechtmäßigkeit der vorgenommenen Maßnahmen."*

Translation:
"As in the peace treaties which terminated the First World War, the victorious powers of the Second World War have, in the peace treaties of which six have so far been concluded, also had recourse to the private external assets of the conquered states which were located on their territory for the purposes of reparation. The same has been agreed by the big powers with respect to Germany in the Potsdam Agreement. The Control Council Ordinance No. 5 and AHC Law No. 63 were adopted for the purpose of implementing these agreements and 19 Allied countries concluded the Paris Inter-Allied Reparation Agreement of 14 January 1946.

The use of German external assets for the purposes of reparation on the basis of international agreements and laws of the occupying powers had to be accepted as a hard fact. It was a matter of relaxing these international agreements and laws where possible. This ought to have been for the most part achieved.

...

The recognition of the inter-allied treaties and the laws of the occupying powers was avoided in the Convention. The Federal Republic merely stated that it would not in the future raise any objections against expropriation measures (Article 3 para. 1). Herein lies a clear reference to the legal reservation previously asserted and only a dispensation with its future reuse, in any case no recognition of the measures carried out."

3.8 Thus, Germany accepted that German external assets were used for the purposes of reparation. It agreed not to raise any objections to the measures. Although the German Government was well aware of the fact that the Western Allied Powers were of the opinion that the title of ownership had been lost (i.e., that there had been a divesting of title),[32] it expressly avoided recognising these measures.

3.9 Accordingly, the Committee for Legal Issues and Constitutional Law stated in its written report on the Settlement Convention (Annex 23):[33]

> *"Die Bundesregierung erkennt die Rechtsgültigkeit der Enteignungen nicht an. Nach den Mitteilungen der Verhandlungsführer ist gerade deshalb die Formulierung gewählt, daß sie gegen die alliierten Maßnahmen, die schon beschlagnahmtes Vermögen betreffen, keine Einwendungen erheben will. Im Zusammenhang damit werden auch keine Klagen aus den der Vergangenheit angehörigen Tatbeständen in den Vertragsstaaten zugelassen werden. Aber eine* ***rechtliche Anerkennung der Enteignung*** *ist damit* ***nicht*** *gegeben."*
>
> Translation:
> "The Federal Government does not recognize the validity of the expropriations. According to information from the negotiators [Note of the translator: of the Convention], this is exactly why wording has been agreed on to the effect that no objections are to be raised against the allied measures affecting property already confiscated. In this context, claims relating to facts from the past are not to be admitted in the contracting states. However, this does **not** constitute a **legal recognition of the expropriation**."

3.10 In its Explanatory Memorandum (Annex 22), the Federal Government referred to German external assets. There was no mention of the inclusion within the scope of the Convention of assets owned by non-Germans; i.e., citizens of a neutral State such as Liechtenstein.

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[32] See above paras. 2.13 *et seq.*

[33] Report of the Committee for Legal Issues and Constitutional Law of 15 November 1952, Official Gazette of the Federal Parliament (*Bundestags-Drucksache*), No. 1/3900, pp. 32 et *seq.*, p. 37.

3.11 The situation was not affected in 1973, when the Prague Treaty (Annex 24) was signed. This Treaty on Mutual Relations between Germany and Czechoslovakia[34] was intended to harmonize relations between the two States. In the preamble, it is stated:

> "Purposing to create lasting foundations for the development of good-neighbourly relations..."

3.12 The Treaty did not address reparation measures. Until today, Czechoslovakia and subsequently the Czech Republic, has unsettled reparation claims of approx 315 billion Kcs.[35] Germany is well aware of this fact.[36] However, as concerns the Prague Treaty, the German Government made clear in a statement of 11 June 1974 (Annex 26)[37] that:

> *"dieser Problemkreis nicht Teil der Verhandlungen war, daß der Vertrag nicht ein Friedensvertrag, sondern ein Vertrag zur Normalisierung der Beziehungen ist, in dem über Reparationen und das Vermögen der Sudetendeutschen nicht verhandelt worden ist."*
>
> Translation:
> "this issue package was not part of the negotiations, that the Treaty is not a peace treaty, but a Treaty on the normalisation of relations, in which reparations and the Sudeten-German assets have not been negotiated on."

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[34] Treaty on the Mutual Relations between the Federal Republic of Germany and the Czechoslovak Socialist Republic, 11 December 1973, *United Nations Treaty Series*, No. 13589, Federal Law Gazette (*Bundesgesetzblatt*) 1974 II, p. 990.

[35] Memorandum for the Prague Treaty, 11 December 1973, Official Gazette of the Federal Assembly of the Czechoslovakian Socialist Republic 1974, No. 66; see also Memorandum to the German-Czech Declaration of 17 December 1996, reprinted in German: D. Blumenwitz, *Interessenausgleich zwischen Deutschland und den östlichen Nachbarstaaten*, Wissenschaft und Politik, Köln, 1998, pp. 139-144.

[36] Statement of defense of 25 June 2001, Proceedings before the Administrative Court of Berlin (Kretschmer ./.. Federal Republic of Germany, Ref. No. VG I A 261.00) (Annex 25).

[37] Statement of the German Government concerning the Prague Treaty of 11 June 1974, Official Gazette of the Federal Parliament (*Bundestags-Drucksache*), No. 7/2270 of 17 June 1974, p. 4.

3.13 This was again stressed by the Constitutional Court in a decision of 25 January 1977 on the Prague Treaty[38] (Annex 27) in paragraphs 2 and 3 of the substantive part of the judgment:

> "2. *Der Abschluß des deutsch-tschechoslowakischen Vertrags kann auch nicht als ein Mitwirken der Bundesregierung an den tschechoslowakischen Konfiskationsmaßnahmen gedeutet werden. Der Vertrag selbst enthält keine Bestimmung, die sich auch nur entfernt auf Fragen des deutschen Privateigentums bezieht. Die Bundesregierung hat auch bei Vertragsabschluß keine auf die von den tschechoslowakischen Behörden vorgenommenen Konfiskationsmaßnahmen bezügliche Willenserklärung abgegeben und insbesondere keine Billigung oder Anerkennung dieser Maßnahmen ausgesprochen.*
>
> 3. *Dem Vertrag kann auch nicht die Wirkung beigemessen werden, in sonstiger Weise eine Veränderung der eigentumsrechtlichen Lage zum Nachteil der Beschwerdeführer herbeigeführt zu haben. Dabei kann offenbleiben, ob der deutsch-tschechoslowakische Vertrag einen Wechsel des staats- und völkerrechtlichen Status der Sudentengebiete im Sinne des Vortrags der Beschwerdeführer bewirkt hat. Jedenfalls hat eine nachträgliche Legalisierung der gegen das Grundeigentum der Beschwerdeführer gerichteten tschechoslowakischen Konfiskationsmaßnahmen im Zusammenhang mit dem Vertrag nicht stattgefunden. Ebensowenig enthält der Vertrag eine Bestimmung, die als Verzicht auf die Geltendmachung etwaiger daraus resultierender Ansprüche verstanden werden könnte. Soweit also den Beschwerdeführern bei Vertragsabschluß hinsichtlich ihres Vermögens noch Eigentumsrechte oder Rückgewähr- und Entschädigungsansprüche zustanden, hat sich die Rechtslage durch den Abschluß des Vertrags nicht verändert.*"
>
> Translation:
> "2. The conclusion of the German-Czechoslovakian Agreement cannot be construed as an acceptance by the Federal Government of the Czechoslovakian confiscation measures. The agreement itself does not contain any provision that is even remotely concerned with issues of German private assets. Upon conclusion of the agreement, the Federal Government did not issue any manifestation of intent with reference to the confiscation measures taken by the

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[38] Decision of the Federal Constitutional Court (*Entscheidungen des Bundesverfassungsgerichts, BVerfGE*), No. 43, pp. 203 *et seq*.

> Czechoslovakian authorities and, in particular, did not express any approval or recognition of these measures.
>
> 3. The agreement cannot be credited with having caused in any way a change of the property law situation to the detriment of the applicants. At the same time, it can remain open whether the German-Czechoslovakian agreement has brought about a change in the national and international status of the Sudeten territories within the meaning of the argument of the applicants. In any case, there has been no subsequent legalisation of the Czechoslovakian confiscation measures directed against the real property of the applicants in connection with the agreement. Nor does the agreement contain a provision that could be understood as a waiver of the assertion of possible claims resulting out of this. Inasmuch, therefore, as the applicants upon conclusion of the agreement are still entitled to ownership rights or claims of restitution and compensation with respect to their assets, the legal situation has not changed as a result of the conclusion of the agreement."

3.14 Germany carefully avoided recognizing the legality of seizure of German external assets. Thus, the property question was left open even after the Prague Treaty was signed. According to the German position, there was no loss of title following the confiscations effected for example by Czechoslovakia at the end of the war. Germany had accepted that reparation claims of Czechoslovakia had been left open, but there was never any question of including confiscated property of Liechtenstein, a neutral State during the war, into this regime.

### C. Germany's position after amendments of the Settlement Convention

3.15 Until 1990, the year in which the Two-Plus-Four Treaty and the Amendments to the Settlement Convention were signed, Germany's position was clear in principle. The confiscation measures based on the "Beneš Decrees" (including the confiscation of Liechtenstein property) were not recognized because Germany took the view that they violated generally accepted rules of international law and regarded them as being of a preliminary nature only, pending their final resolution by a peace treaty. There was never any question that property of neutral States was covered by the Settlement Convention.

3.16 Since 1990, this position has changed fundamentally in a series of gradual steps, commencing with the Pieter-van-Laer case and the judgments of the German courts, reaching its climax in Germany's position before the European Court of Human Rights in Strasbourg and ensuing diplomatic correspondence and consultations.

### 1. The decisions of the German Civil Courts in the *Pieter-van-Laer* case

3.17 By their judgments of 10 October 1995 and 9 July 1996 respectively, both the Court of first instance, the Regional Court of Cologne (Annex 28), and the *Oberlandesgericht Köln* (hereafter "Court of Appeal of Cologne") (Annex 29), rejected the claim of Prince Hans-Adam II of Liechtenstein for the restoration of the painting. They ruled that they had no jurisdiction over such a claim by virtue of the Settlement Convention.

3.18 Both German courts invoked the inadmissibility rule of Article 3 (3) of Chapter Six of the Settlement Convention (Annex 16), thereby denying the plaintiff the relief sought.

3.19 The German civil courts held that the regulations cited were still applicable, irrespective of the termination of the Allied Powers' rights and responsibilities relating to Germany as a whole set out in the Two-Plus-Four Treaty (Annex 18). In the courts' opinion, the agreement concluded between the governments of the Federal Republic of Germany and the Three Powers on 27/28 September 1990 stipulated rather that individual provisions of the Settlement Convention remained in force, including Article 3 (1) and (3) of Chapter Six of the Settlement Convention. The Court of Appeal of Cologne stated in its decision of 9 July 1996:

> *"Das in Art. 7 Abs. 1 S. 2 Zwei-plus-Vier-Vertrag statuierte Erlöschen der Vier-Mächte-Rechte in bezug auf Deutschland als Ganzes wird ergänzt durch die Ziffern 2 und 3 der Vereinbarung der Regierung der Bundesrepublik Deutschland und der drei West-Alliierten vom 27./28.09.1990 zu dem Vertrag über die Beziehungen zwischen der Bundesrepublik Deutschland und den Drei Mächten sowie zu dem Vertrag zur Regelung aus Krieg und Besatzung entstandener Fragen. Gemäß Ziffer 2 dieses Abkommens tritt der Überleitungsvertrag mit Ausnahme der in Ziffer 3 aufgeführten Einzelbestimmungen des Vertragswerkes, zu denen auch Teil VI Art. 3 Abs. 1, 3 zählt, außer Kraft."* (page 8/9 of the decision)
>
> Translation:
> "The extinction of quadripartite law with respect to Germany as a whole, as established by Article 7 paragraph 1 sentence 2 Two-Plus-Four Treaty, is supplemented by paragraphs 2 and 3 of the agreement between the governments of the Federal Republic of Germany and the three Western Allies dated September 27/28 1990 with respect to the Convention on Relations between the Three Powers and the Federal Republic of Germany and the Convention on the Settlement of Matters Arising out of the War and the Occupation. In accordance with paragraph 2 of this Convention, the Settlement Convention ceases to be in force with the exception of individual provisions of the instrument listed under paragraph 3, which also includes Article 3 paragraph 1 and 3 of Chapter Six." (page 7 of the translation)

3.20 In the opinion of both the Regional Court of Cologne and the Court of Appeal of Cologne, the applicability of Article 3 (3) of Chapter Six of the Settlement Convention extends to Liechtenstein citizens. According to this view, Liechtenstein property is to be regarded as German external assets within the meaning of Article 3 in so far as German courts are obliged to accept the categorisation by the then Czechoslovakian State:

> *"Insbesondere nach dem Urteil des BGH vom 11.04.1960 (BGHZ 32, 170, 172 f) reicht es zur Anwendung der Bestimmung des Teil VI Art. 3 Überleitungsvertrag aus, daß das Vermögen als deutsches*

> *Vermögen beschlagnahmt worden sei.*" (page 20 of the judgment of the Court of Appeal)
>
> Translation:
> "In particular in accordance with the judgment of the Federal Court of Justice dated April 11 1960 (*BGHZ - Amtliche Entscheidungssammlung des BGH in Zivilsachen* - 32, 170, 172 f), it will be sufficient for the application of Article 3 Chapter Six Settlement Convention that the assets were seized as German assets." (page 18 of the translation)

3.21 At the same time the Regional Court of Cologne rejected an application by the Plaintiff for a stay of the proceedings until the competent administrative courts had reached a final decision on a compensation claim pursuant to the legislation concerning losses due to reparations, on the ground of such a claim was the corollary of the Regional Court of Cologne's ruling. In accordance with that legislation, German citizens have a right to be compensated for losses or damage suffered in connection with reparation measures affecting their property. However, the Regional Court of Cologne held that none of the prerequisites for compensation under that legislation were fulfilled in the case under consideration. On page 16 of its judgment, the Court stated:

> "*Lastenausgleichsansprüche des Klägers bestehen nämlich unabhängig von der Frage, ob er deutscher Volkszugehöriger im Sinne des § 230 a LAG ist, nicht. Ansprüche bestehen nämlich gemäß § 230 Abs. 1 LAG nur dann, wenn der Geschädigte am 31.12.1952 seinen ständigen Aufenthalt im Geltungsbereich des Grundgesetzes oder in Berlin (West) hatte. Dies trifft jedoch für den Kläger bzw. seinen Vater offensichtlich nicht zu.*"
>
> Translation:
> "...independent of the question of whether or not the Plaintiff is "*deutscher Volkszugehöriger*" (of German ethnic origin) within the meaning of Section 230(a) *LAG-Lastenausgleichsgesetz* (Equalisation of Burdens Act), the Plaintiff is not entitled to claim equalisation of burdens. And this is so, because according to Section 230 paragraph 1 *LAG*, the person who suffered the loss is only entitled to raise such a claim if he had his permanent residence within the territory of application of German Basic Law or in Berlin (West) on December 31 1952. However, this is obviously not the case as

> far as the Plaintiff or his father are concerned." (page 14/15 of the translation)

3.22 The Regional Court of Cologne also rejected as unfounded the Plaintiff's argument that the measures effected on the basis of the Decree No. 12 of 12 June 1945 had not been reparation measures directed against German assets, but rather measures of a punitive character - as the wording of the Decree's preamble clearly shows.

3.23 The Court of Appeal Cologne considered it to be undeniable that the seizure of the painting was effected as a result of a state of war and for the purpose of reparations within the meaning of Article 3 (1) and (3) of Chapter Six of the Settlement Convention:

> *"Die Beschlagnahme des Gemäldes erfolgte auch aufgrund des Kriegszustands zu Zwecken der Reparation im Sinne des Teiles VI Art. 3 Abs. 1, 3 Überleitungsvertrag."* (page 25 of the decision)
>
> Translation:
> "The seizure of the painting was also effected because of the state of war and for the purpose of reparation measures within the meaning of Article 3 paragraph 1 and 3 of Chapter Six Settlement Convention." (page 21 of the translation)

3.24 During the oral hearings before the Court of Appeal of Cologne, both the Czech Republic and Hans-Adam II argued that the Beneš Decree No. 12 was not a reparation measure. The Court, however, gave its own interpretation of Beneš Decree No. 12, categorising the measures taken under it as reparation measures against German external assets. In its reasoning on this point, the Court invoked a statement made by President Beneš in 1944:

> *"Das Vermögen der betroffenen Personen wurde als Feindvermögen eingezogen und sollte den Äußerungen des Staatspräsidenten Benes zufolge als "Vorschuß auf die Reparation gegenüber dem Deutschen Reich" dienen (zitiert bei Raschhofer in FS von der Heydte, 495, 511).*" (page 25 of the judgment)

> Translation:
> "The assets of the persons concerned were confiscated in their capacity as enemy assets and, according to President Beneš' comments it was meant to serve as "*Vorschuß auf die Reparation gegenüber dem Deutschen Reich*" (an advance on the reparation vis-à-vis the German *Reich*) (cited by Raschhofer in *Festschrift von der Heydte*, pages 495, 511)." (page 22 of the translation)

On page 22 of the decision the Court stated also:

> "*Unmaßgeblich für die streitgegenständliche Rechtsfrage ist schließlich auch die gegenwärtige Rechtsauffassung des tschechischen Staates.*"
>
> Translation:
> "And, finally, with respect to the matter at issue, the present legal opinion of the Czech State is of no importance either." (page 19 of the translation)

3.25 In its decision dated 25 September 1997 (Annex 30), the highest German court for civil matters, the *Bundesgerichtshof* (hereafter "Federal Court of Justice"), finally confirmed to its full extent the judgment delivered by the Court of Appeal of Cologne.

### 2. The Decision of the *Bundesverfassungsgericht* (Federal Constitutional Court) of 14 January 1998

3.26 On 30 October 1997, Hans-Adam II filed a constitutional complaint against the Federal Court of Justice's decision of 25 September 1997 before the Federal Constitutional Court in Karlsruhe. Hans-Adam II argued that the Exchange of Notes of 27/28 September 1990, in which the signatories agreed to keep part of the Settlement Convention in force, should actually have been ratified by the German Parliament. Furthermore, he complained in respect of a violation of international law, international law being directly applicable as German law pursuant to Article 25 of the German Basic Law. He argued that it was not possible on any ground to regard Liechtenstein property as German external assets within the meaning of the Settlement Convention. Concurrently, he filed a motion for an interlocutory order against the Federal Court of Justice's decision in order to prevent the return of the Pieter-van-Laer painting to the Czech Republic prior to the conclusion of the proceedings pending before the Federal Constitutional Court.

3.27 In its decision dated 26 November 1997 (Annex 31), the Federal Constitutional Court made the interlocutory order as requested and prohibited the sequestrator from returning the painting to the Czech Republic. This decision was exceptional, indeed, in Germany's previous history, because, as a rule, the Federal Constitutional Court does not make interlocutory orders against the Federal Court of Justice in its capacity as the highest court in civil matters. Such an order is made only if - after an initial look to the case - the Court considers it likely that the constitutional appeal will succeed on the merits, because it seems evident that the Federal Court of Justice's decision was unconstitutional.

3.28 However, on 28 January 1998 the Federal Constitutional Court issued a final decision (Annex 32) rejecting the Applicant's constitutional complaint. Stating the reasons for their decision, the judges of the Constitutional Court agreed with the line of argument adopted by the civil courts. However, the Court presented an additional argument in holding that, where an original law of the Three Powers had existed in Germany, that law could legitimately be extended to the territory of the former German Democratic Republic by a simple exchange of letters and without participation of the German Parliament - as was the case with the Exchange of Notes of 27/28 September 1990.

3.29 In addition, the Court not only applied the inadmissibility rule of Article 3 (3), but also the non-objection rule of Article 3 (1) of Chapter Six of the Settlement Convention and declared that where the requirements of Article 3 (1) of Chapter Six of the Settlement Convention are fulfilled - as was the case here - the

German courts were not only obliged to dismiss claims before them, but Germany was also prohibited from raising objections against such measures carried out by the Three Powers and other allied countries.

3.30 The Federal Constitutional Court confirmed the civil court's opinion that Liechtenstein property fell within the scope of the Settlement Convention. In the Court's view it was not arbitrary for the civil courts to rely upon the classification of Liechtenstein assets as German external assets by the expropriating State. In this connection, the Court resorted to the purpose of the Settlement Convention and accepted the civil court's view on this point. It held that the question of whether or not any specific property was to be classified as German external assets within the meaning of Article 3 (1) of Chapter Six of the Settlement Convention was a matter exclusively within the competence of the expropriating State.

### 3. Statements of the Municipality of Cologne

3.31 The Municipality of Cologne - the local German authority responsible for the Wallraf-Richartz-Museum - was the defendant in the Pieter-van-Laer case. However, at the earliest stage, when the case was brought before the Regional Court of Cologne, the Municipality of Cologne served a third party notice on the Brno National Historical Monuments Office and demanded that the latter should replace them as a party to the action, because the Municipality of Cologne had no economic interest in the matter, while the National Historical Monuments Office was the lender of the painting. The Brno National Historical Monuments Office joined the action in support of the Municipality of Cologne, but did not replace the Municipality as defendant. It merely acted as a third party intervener against the Applicant. Pursuant to Section 67 of the German Code of Civil Procedure, any pleadings used by the intervener to defend his position or to raise objections are attributable to the defendant unless they contradict the defendant's own declarations and actions.

3.32 In the course of the lawsuit, and in particular before the Regional Court of Cologne, the Brno National Historical Monuments Office made a number of statements related to the Principality of Liechtenstein's alleged lack of sovereignty and to the allegation that Liechtenstein was part of the German nation.

3.33 For example, in its capacity as intervening third party in support of the Municipality of Cologne, the Brno National Historical Monuments Office *inter alia* made the following assertions: (a) it was and has been generally known that Liechtenstein nationals belong to the German people; (b) residents of Liechtenstein are Catholic Germans, and (c) the Regional National Committee in Olomouc correctly declared that the Head of State of the Principality of Liechtenstein was a person belonging to the German people, which was generally known, and that he consequently was a member of the group of persons whose property could be expropriated in accordance with Section 1 (1 a) of Decree No. 12 (Annex 6).

3.34 The lawyers representing the Applicant before the court at the time expressly asked the Municipality of Cologne to contradict this argument (Annex 33), but the Municipality of Cologne as principal defendant failed to do so and accepted the argument put forward by the intervener, the Brno National Historical Monuments Office (Annex 34). In these circumstances, the intervener's statements may be attributed to the Municipality of Cologne pursuant to Section 67 of the German Civil Procedure Law.

3.35 In the belief that the Municipality of Cologne's position was unlikely to have been shared by the Government of the Federal Republic of Germany, the Government of the Principality of Liechtenstein instructed its Embassy in Bern to present an aide-mémoire to the German Ambassador Heyken on 4 October 1995 (Annex 35). Referring to the Municipality of Cologne's conduct in its capacity as a local authority forming part of the Federal Republic of Germany and therefore subject to the legal oversight of the Land of North-Rhine Westphalia as far as questions of the legality of administrative acts are concerned, the Liechtenstein Government asked the following questions:

> "*1. Entspricht die von der Stadt Köln mittelbar eingenommene Haltung auch der Auffassung der Bundesrepublik Deutschland?*
>
> *2. Sollte die Haltung der Stadt Köln nicht der Auffassung der Regierung der Bundesrepublik Deutschland entsprechen, welche Möglichkeiten gibt es, auf die Stadt Köln einzuwirken, von derartigen rechtsverbindlichen Erklärungen mit weitreichenden Konsequenzen auch auf das Verhältnis zwischen dem Fürstentum Liechtenstein und der Bundesrepublik Deutschland im Hinblick auf die Reparationsfrage abzusehen, um ein einheitliches Bild in der außenpolitischen Haltung der Bundesrepublik Deutschland gegenüber dem Fürstentum Liechtenstein wiederherzustellen?*"
>
> Translation:
> "1. Does the position indirectly taken by the Municipality of Cologne correspond to the position taken by the Federal Republic of Germany?
>
> 2. In the event that the position of the Municipality of Cologne does not correspond to the point of view supported by the Government of the Federal Republic of Germany, what possible means are available to influence the Municipality of Cologne to the effect that the latter will refrain from making such declarations of a legally binding nature which are bound to have far-reaching consequences for the relationship between the Principality of Liechtenstein and the Federal Republic of Germany also with respect to the reparation issue, and in order to restore the Federal Republic of Germany's consistent attitude vis-à-vis the Principality of Liechtenstein with regard to foreign affairs?"

3.36 The German Embassy took delivery of the aide-mémoire of 4 October 1995, but the Ambassador of the Principality of Liechtenstein was advised only in December 1995 that the contents of the aide-mémoire had been brought to the attention of the responsible court, but that those contents had not been considered as having any relevance for the court's decision.

## 4. Statements of the German Government before the European Court of Human Rights

3.37 The Municipality of Cologne's attitude in the Pieter-van-Laer case reflected a major change in Germany's position. This was particularly evident in the submission of the Agent of the Government of the Federal Republic of Germany in the context of the action for violation of human rights brought before the European Court of Human Rights in Strasbourg by Prince Hans-Adam II of Liechtenstein.

3.38 Following the decision of the Federal Constitutional Court of 28 January 1998 (Annex 32), in which the constitutional complaint of Prince Hans-Adam II of Liechtenstein was dismissed, Hans-Adam II filed an individual application to the European Court of Human Rights on 8 June 1998. He based his application on the fact that his human rights had been violated by the decision of the German courts and also by the Municipality of Cologne's refusal to return the Pieter-van-Laer painting to him. He asserted in particular a violation of Article 6 (1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (denial of justice). In addition, he complained of a violation of Article 1 of the First Protocol to this Convention and Article 14 of this Convention in conjunction with Article 1 (1) of the First Protocol.

3.39 In a statement dated 29 October 1999 (Annex 36), in response to the application, the Agent of the Federal Republic of Germany also invoked the decision of the Administrative Court in Bratislava of 21 November 1951 (Annex 9). He adopted the principal arguments on which the Administrative Court in Bratislava had based its decision, namely that the Reigning Prince of Liechtenstein in his capacity as the Head of State of Liechtenstein was to be regarded as a person of German nationality on the grounds that this was a fact that "*allseitig bekannt war und ist*" (official translation of Germany: "was and is generally known"). Referring to this decision of the Administrative Court in Bratislava, the Agent of the Government of the Federal Republic of Germany considered that:

> (Es ist)"*jedenfalls nicht willkürlich und vertretbar, wenn die deutschen Gerichte davon ausgingen, daß das Vermögen als deutsches Vermögen beschlagnahmt worden sei. Artikel 3 des VI. Teils des Überleitungsvertrags wird vom Beschwerdeführer zu eng ausgelegt, wenn er deutsches Auslandsvermögen mit dem Vermögen deutscher Staatsangehöriger gleichsetzt.*" (page 14 of the reply)
>
> Official Translation of Germany:
> "With respect to these reasons, it is at least not arbitrary and it is defensible if the German courts proceeded on the assumption that the property was seized as German property. Article 3 of Chapter Six of the Settlement Convention is interpreted too narrowly by the Applicant if he equates German external assets with the assets of German citizens." (page 14 of the translation)

3.40 Furthermore, the Agent of Germany clearly pointed out in his pleading that he considered Liechtenstein citizens to be "*deutsche Volkszugehörige*" (persons belonging to the German "people"). In his view, Liechtenstein citizens are to be regarded as "Germans" in the ethnic meaning of the term. In this context he alleged that the Principality of Liechtenstein had formed part of the Habsburg Empire, another point on which the Agent of Germany was in error, as this was never the case.

3.41 This opinion was expressly confirmed by the Agent of Germany in his oral pleading before the European Court of Human Rights on 31 January 2001. He declared that the 1951 decision of the Administrative Court in Bratislava was defensible. He argued that the relevant issue was not citizenship but "*Volkszugehörigkeit*" (belonging to the German "people"). Therefore - in the opinion of the Agent of Germany - it is a natural corollary to include Liechtenstein citizens among those who can be regarded as "*deutsche Volkszugehörige*" (persons belonging to the German "people"), like the so-called "*Sudetendeutsche*" (Germans from Sudetenland), because they speak a German language and belonged to the Habsburg Reich and consequently - according to Germany's assertion - are part of the "*deutscher Kulturkreis*" (German cultural community).

### 5. Diplomatic correspondence and bilateral consultations

3.42 Responding to the first signs of Germany's imminent change of position, which Liechtenstein found increasingly difficult to understand, Liechtenstein exchanged several diplomatic notes with Germany and also initiated two bilateral consultations between Liechtenstein and German government delegations. It became apparent that the fundamental change in Germany's position was not restricted to the Pieter-van-Laer painting, but extended to the entirety of Liechtenstein property located in the territory of the Czech Republic.

3.43 Not having received any satisfactory reply to its aide-mémoire of 4 October 1995, the Government of the Principality of Liechtenstein felt obliged to consult the Government of the Federal Republic of Germany in connection with the "German Czech Declaration on Mutual Relations and their Future Development" signed by the Government of the Federal Republic of Germany and the Government of the Czech Republic in Prague on 21 January 1997 (Annex 37). In its diplomatic note of 5 May 1997 (Annex 38), the Government of the Principality of Liechtenstein stated:

> *"Unter Bezugnahme auf die am 21.01.1997 in Prag von der Regierung der Bundesrepublik Deutschland und von der Regierung der Tschechischen Republik unterzeichneten "Deutsch-Tschechische Erklärung über die Gegenseitigen Beziehungen und deren künftige Entwicklung", nach deren Ziff. IV "beide Seiten darüber einstimmen, dass das begangene Unrecht der Vergangenheit angehört" und dass "jede Seite ihrer Rechtsordnung verpflichtet bleibt und respektiert, dass die andere Seite eine andere Rechtsauffassung hat" ist es der Regierung des Fürstentums Liechtenstein ein Bedürfnis festzuhalten, dass diese Deutsch-Tschechische Erklärung die Rechte des Fürstentums Liechtenstein sowie die Rechte seiner Staatsangehörigen im Hinblick auf die völkerrechtswidrige Enteignung liechtensteinischen Vermögens durch die tschechoslowaki-*

> *sche Regierung nicht berührt, obwohl diese Enteignungen unter dem Titel "volksdeutsches Vermögen" oder "deutsches Auslandsvermögen" erfolgt sind."*
>
> Translation:
> "With reference to the "*Deutsch-Tschechische Erklärung über die Gegenseitigen Beziehungen und deren künftige Entwicklung*" (German Czech Declaration on Mutual Relations and their Future Development) signed by the Government of the Federal Republic of Germany and the Government of the Czech Republic in Prague on January 21, 1997, and subparagraph IV thereof, pursuant to which "*beide Seiten darüber übereinstimmen, dass das begangene Unrecht der Vergangenheit angehört*" (both sides agree that the wrongs committed shall be a matter of the past) and that "*jede Seite ihrer Rechtsordnung verpflichtet bleibt und respektiert, dass die andere Seite eine andere Rechtsauffassung* hat" (each side remains committed to its legal order and respects that the other side has a different legal position), it is the desire of the Government of the Principality of Liechtenstein to emphasise that this German Czech Declaration will not affect the rights of the Principality of Liechtenstein and the rights of her citizens with regard to Liechtenstein assets which were expropriated by the Czechoslovakian Government contrary to international law, in spite of the fact that such expropriations were effected under the heading of "*volksdeutsches Vermögen*" (ethnic German assets) or "*deutsches Auslandsvermögen*" (German external assets)."

3.44 In reply thereto, the Federal Government had its Embassy in Bern declare in a *procès-verbal* of 10 June 1997 (Annex 39):

> *"Bei der deutsch-tschechischen Erklärung über die gegenseitigen Beziehungen und deren künftige Entwicklung vom 21. Januar 1997 handelt es sich um eine bilaterale politische Erklärung, die die Rechte dritter Staaten und deren Angehöriger nicht berührt.*
>
> *Was im übrigen die Frage deutscher vermögensrechtlicher Ansprüche betrifft, ist mit der Erklärung keine Aufgabe von Rechtspositionen verbunden. Es wird im Gegenteil ausdrücklich eine Unterschiedlichkeit der Rechtsauffassungen zwischen beiden Staaten festgehalten, wie in Ziffer IV der Erklärung zum Ausdruck kommt, worin es heißt "... wobei jede Seite ihrer Rechtsordnung verpflichtet bleibt und respektiert, dass die andere Seite eine andere Rechtsauffassung hat"."*

> Translation:
> "The German-Czech Declaration with Respect to the Mutual Relations and their Future Development dated 21 January 1997 is a bilateral political declaration which does not affect the rights of third States and their nationals.
>
> As far as the question of German claims with respect to property rights is concerned, this Declaration is not connected with any waiver of legal positions. On the contrary, the difference in the legal opinions of both states is expressly set out, as expressed in item IV of the Declaration, which reads "... while each side remains committed to its legal order and respects that the other side has a different legal position"."

3.45 This point of view expressed by the German government in their *procès-verbal* of 10 June 1997 reflected the position Germany had taken over several decades, namely to consider all measures taken by the Allies against German external assets as contrary to international law. It also corresponded to the point of view expressed by the then Chancellor of the Federal Republic of Germany, Dr. Helmut Kohl, in his letter of 14 January 1997 (Annex 40) to the effect that Germany has not yet recognized Czechoslovakia's measures directed against the Liechtenstein property and others. The Chancellor pointed out in his letter addressed to the Reigning Prince Hans-Adam II of Liechtenstein:

> *"Die deutsch-tschechische Gemeinsame Erklärung wird im übrigen keinerlei Einfluß auf diesen Rechtsstreit haben, da sie Rechtsfragen im Zusammenhang mit Enteignungen in der damaligen Tschechoslowakei offenhält."*
>
> Translation:
> "As far as the German Czech Joined Declaration is concerned, it will not have any influence on this lawsuit, because it leaves open the questions in connection with expropriations in the then Czechoslovakia."

3.46 However, by this letter, the Government of Germany contradicted the rulings of the civil courts in Cologne, which already had been delivered by the date of the letter. In their rulings, the courts had applied Article 3 of Chapter Six of the Settlement Convention to Liechtenstein property located in the Czech Republic, thereby expressly settling for good the issue of Allied confiscation measures. After the Exchange of Notes dated 27/28 September 1990, Article 3 of Chapter Six of the Settlement Convention was no longer a temporary measure pending the conclusion of a peace treaty, but had now become definitive and final, and this final character of Article 3 deprived Germany of the chance to raise substantive objections at any point of time against measures governed by Article 3 of Chapter Six of the Settlement Convention. As a result, the German courts had *not* left the property issue open, but had come to a final settlement on the point, with the result that all persons concerned had lost their title of ownership.

3.47 After the Federal Constitutional Court failed to contradict the point of view taken by the civil courts, the Government of the Principality of Liechtenstein turned to the Government of the Federal Republic of Germany and referred to the fact that Liechtenstein property had been included in the post-war reparations regime contrary to international law and asking for a meeting on a diplomatic level. In its aide-mémoire of 3 June 1998 (Annex 41), sent to the Foreign Office of the Federal Republic of Germany, the Principality of Liechtenstein expressed its doubts as to whether Germany's position was in conformity with international law and stated that it could not accept the legal injury caused thereby.

> *"Die Entscheidung des Bundesverfassungsgerichts der Bundesrepublik Deutschland vom 28. Januar 1998 in dem Verfahren über die Verfassungsbeschwerde S.D. Fürst Hans-Adam II. von und zu Liechtenstein (2 BvR 1981/97) wirft nach übereinstimmender Ansicht der von der Regierung des Fürstentums Liechtenstein konsultierten Experten erhebliche Zweifel bezüglich ihrer Vereinbarkeit mit dem Völkerrecht auf. Die vom Bundesverfassungsgericht praktizierte "zweckorientierte Auslegung" des Artikels 3 Absätze 1 und 3 des VI. Abschnitts des sogenannten Überleitungsvertrags von 1954 läuft im Ergebnis darauf hinaus, das Fürstentum Liechtenstein und liechtensteinische Staatsangehörige in die Reparations- und Kriegsschadensregelung der Bundesrepublik Deutschland einzubeziehen, ohne dass es hierfür irgendeinen Zurechnungszusam-*

*menhang gäbe. Das verletzt gleichermaßen völkerrechtlich garantierte Rechtspositionen des liechtensteinischen Staatsoberhauptes wie des Staates Liechtenstein selbst.*

*Die Regierung des Fürstentums Liechtenstein bittet daher um Verständnis dafür, dass sie, bei aller Anerkennung der Unabhängigkeit der Gerichte, die entstandenen Rechtsbeeinträchtigungen nicht hinnehmen kann.*

*Im Interesse einer kooperativen und freundschaftlichen Erörterung der mit der erwähnten Entscheidung des Bundesverfassungsgerichts entstandenen Situation und der sich aus ihr ergebenden Fragen sollten daher möglichst umgehend Gespräche auf diplomatischer Ebene unter Einschluß von Experten stattfinden."*

Translation:
"Legal experts consulted by the Government of the Principality of Liechtenstein concur in the opinion that the decision of the Federal Constitutional Court of the Federal Republic of Germany of 28 January 1998 in the proceedings concerning the constitutional complaint filed by HSRH Prince Hans-Adam II of Liechtenstein (2 BvR 1981/97) gives rise to considerable doubt as to whether such decision is compatible with international law. In the last analysis, the "purpose-oriented interpretation" of Article 3 paragraph 1 and 3 of Chapter Six of the so-called Settlement Convention of 1954 amounts to an inclusion of the Principality of Liechtenstein and Liechtenstein citizens into the Federal Republic of Germany's settlement of reparations and damages caused by the war, even though there is no reason whatsoever to establish such a link. This constitutes a violation of the legal status guaranteed by virtue of international law both with respect to the Liechtenstein Head of State and the State of Liechtenstein itself.

The Government of the Principality of Liechtenstein therefore asks you to understand that, regardless of its recognition of the independence of courts, they cannot accept the legal injury caused thereby.

In the interest of a cooperative and friendly discussion of the situation created by the above-described decision of the Federal Constitutional Court and the questions arising as a result thereof, talks on a diplomatic level should be held as soon as possible with the participation of experts."

3.48 Following this aide-mémoire, two consultations took place between German and Liechtenstein government delegations. They were held on 10 July 1998 in Bonn and on 14 July 1999 in Vaduz.

3.49 During the first consultation in Bonn, the Liechtenstein delegation expressly asked whether Germany agreed with the interpretation of the Federal Constitutional Court to the effect that, even where Liechtenstein's neutral property was concerned, German courts were prohibited by the Settlement Convention from deciding on the lawfulness of confiscation measures carried out against German external property if the confiscations had been carried out to meet German reparation obligations.

3.50 The German delegation replied that the German Executive had taken cognisance of the decision of its supreme court. They said they were bound by that decision and it would also be bound in relation to any future cases. In all other respects, Germany was unable to see that the decision of the Federal Constitutional Court could amount to a violation of rights of the State of Liechtenstein. Nor were there any *delicta juris gentium* involved for which Germany would be liable vis-à-vis Liechtenstein.

3.51 In preparation for the second round of bilateral consultations, Liechtenstein sent in advance a list of questions (Annex 42) intended to serve as a framework for discussions at the second round:

> *"1. Teilt die neue Bundesregierung die Rechtsansicht ihrer Vorgängerin, dass aufgrund einer zweckorientierten Auslegung von Teil VI Art. 3 Abs. 1 und 3 des Überleitungsvertrages (Vertrag zur Regelung aus Krieg und Besatzung entstandener Fragen ... BGBl. 1955 II S. 405) unter "Maßnahmen gegen das deutsche Auslandsvermögen" alle Maßnahmen verstanden werden, die nach der Intention des handelnden Staates gegen deutsches Vermögen gerichtet waren und demgemäß die Tschechoslowakei 1945 auch das Vermögen von Bürgern des im Zweiten Weltkrieg neutralen Für-*

*stentums Liechtenstein zum Zwecke der Reparation konfiszieren durfte?*

*2. Ist sich die Regierung der Bundesrepublik Deutschland bewußt, daß die Bundesrepublik Deutschland gemäß Art. 5 Überleitungsvertrag grundsätzlich verpflichtet war, die Eigentümer der Werte, die aufgrund der in Art. 3 Überleitungsvertrag bezeichneten Maßnahmen beschlagnahmt worden sind, zu entschädigen, und daß der dem Grunde nach bestehende, vom Bundesverfassungsgericht erst durch Beschluß vom 28. Januar 1998 tatbestandsmäßig festgestellte Entschädigungsanspruch betroffener liechtensteinischer Bürger von der Aufhebung des Art. 5 Überleitungsvertrag durch den Notenwechsel vom 27./28.09.1990 (BGBl. 1990 II S. 1387) nicht berührt wurde und nicht berührt werden konnte?*

*Teilt die Regierung der Bundesrepublik Deutschland den von dem Bundesgerichtshof wie auch vom Bundesverfassungsgericht nicht beanstandeten Rechtsstandpunkt des LG/OLG Köln (Az: 5 O 182/92/22 U 215/95 - Urteil vom 09.07.1996), dass die bis dato geltende deutsche innerstaatliche Rechtsordnung den betroffenen Bürgern Liechtensteins zu keinem Zeitpunkt eine Art. 5 Überleitungsvertrag adäquate Entschädigung einräumte? Wie wird die Bundesregierung diese Diskriminierung gegenüber anderen Kriegsfolgegeschädigten ausgleichen?*

*4. Durch eine Reihe von völkerrechtlichen Verträgen mit den im Zweiten Weltkrieg neutralen Staaten hat die Bundesrepublik Deutschland sichergestellt, daß deren Angehörige nicht unter Kriegsfolgen zu leiden haben, für die der Angriff Deutschlands auf seine Nachbarstaaten kausal war und ist.*

*Vgl. z.B. die Abkommen mit der Schweiz (BGBl. 1953 II S. 15), mit Schweden (BGBl. 1956 II S. 811), mit Spanien (BGBl. 1959 II S. 245) und mit Portugal (BGBl. 1959 II S. 264)*

*Ist die Bundesregierung bereit, im Geiste der genannten Verträge und in der Erkenntnis, dass der Notenwechsel vom 27. /28.09.1990, die Entscheidung des Bundesverfassungsgerichts vom 28.01.1998 und die deutsch-tschechische "Schlusserklärung" vom 08.03.1999 nunmehr die das Fürstentum treffenden Kriegsfolgeschäden endgültig fixiert haben, auch mit Liechtenstein einen gerechten Ausgleich zu vereinbaren?"*

Translation:

"1. Does the new German Government share the legal opinion of its predecessor that on the basis of a purpose-oriented interpretation of Article 3 paragraph 1 and 3 of Chapter Six Settlement Convention (Convention on the Settlement of Matters Arising out of the War and the Occupation... *BGBl.* [*Bundesgesetzblatt* - Federal Law Gazette] 1955 II p 405) the term "measures carried out with regard to German external assets" is to be understood to include all measures directed against German property in accordance with the intention of the acting State, and that, consequently, in 1945, Czechoslovakia was entitled to confiscate for the purpose of reparations also the assets of citizens of the Principality of Liechtenstein which was neutral in World War II?

2. Is the Government of the Federal Republic of Germany aware of the fact that pursuant to Art. 5 Settlement Convention, the Federal Republic of Germany was in principle obliged to compensate the owners of assets which had been seized on the basis of the measures specified in Art. 3 Settlement Convention, and that the compensation claim of Liechtenstein citizens affected hereby - a claim which has existed on the merits, but was established in recognition of the facts by the decision of the *Bundesverfassungsgericht* [Federal Constitutional Court] no earlier than on January 28, 1998 - was not affected and could not be affected by the abrogation of Art. 5 Settlement Convention by means of the exchange of notes dated September 27/28, 1990 (*BGBl.* 1990 II p 1387)?

3. Does the Government of the Federal Republic of Germany share the view of the *LG/OLG Köln* [*Landgericht/Oberlandesgericht Köln* - Regional Court/Court of Appeal Cologne] (ref No: 5 O 182/92 /22 U 215/95 - Judgment of July 9, 1996) - a view that has not been contradicted neither by the Bundesgerichtshof [Federal Court of Justice] nor by the Federal Constitutional Court - that the German national legal order applicable to date had at no point in time granted adequate compensation - in terms of Article 5 Settlement Convention - to Liechtenstein citizens affected in this context? How will the Federal Government even out such a treatment that is discriminating in comparison to other persons who suffered losses as a result of the war?

4. By means of a number of international treaties with States that were neutral during World War II, the Federal Republic of Germany ensured that their nationals will not have to suffer such losses as a result of the war which were and are caused by Germany's attack on her neighbouring States.

> Cf eg the treaties with Switzerland (*BGBl.* 1953 II p 15), with Sweden (*BGBl.* 1956 II p 811), with Spain (*BGBl.* 1959 II p 245) and with Portugal (*BGBl.* 1959 II p 264)
>
> Is the Federal Government prepared also to agree on a just settlement with Liechtenstein, in the spirit of the above-mentioned treaties and in recognition of the fact that the exchange of notes of September 27/28, 1990, and the German-Czech "final declaration" of March 8, 1999, have now finally fixed such losses resulting from the war that have been suffered by the Principality?"

3.52 In the course of the second consultation, the German delegation gave precise answers to some of these questions, while other questions were answered in a summary manner.

3.53 With respect to the first question, Germany stressed that the Federal Government had to accept the result of the proceedings before German courts as binding for the future. In addition, the German delegation stated that the Federal Government had to accept the ruling of its supreme court. This decision would be attributable to Germany under international law.

3.54 With respect to questions 2 and 3, the German delegation read out an official statement of the Ministry of Finance which had been contacted in advance - as had the Ministry of Justice and the Chancellor's Office - to agree on a concerted position. According to the Ministry of Finance's statement, Article 5 of Chapter Six of the Settlement Convention had been deleted because the German Government was of the opinion that sufficient provision had been made for compensation of all German citizens concerned. Consequently, Germany had considered Article 5 obsolete. When deleting that Article, the parties involved had not been aware of the Liechtenstein property issue. In this context, the German delegation explained that Liechtenstein citizens could not claim compensation by virtue of German domestic law. They had to rely on the diplomatic protection of their home country in order to enforce their claims. The Principality of Liechtenstein was free to have recourse to diplomatic means.

3.55 As regards question 4, the German delegation pointed out that Liechtenstein had also been included in the compensation agreement entered into with Switzerland at the time. However, it conceded that no payments had been made to Liechtenstein under the agreement, because such agreement only covered the confiscation of German assets in Liechtenstein. No such German property had been confiscated in Liechtenstein.

3.56 Taking up the results of the consultations, Liechtenstein's Foreign Minister Dr. Andrea Willi wrote to the German Foreign Minister Josef Fischer on 9 December 1999 (Annex 43). The German Foreign Minister having refused to discuss this matter with the Liechtenstein Foreign Minister in an informal meeting during the OSCE Summit Meeting on 18/19 November 1999 in Istanbul, the Liechtenstein Foreign Minister asked for an urgent appointment to talk about the issue and achieve a solution. Enclosed with her letter of 9 December 1999 was an aide-mémoire (Annex 44) also dated 9 December 1999, setting out once more the Principality of Liechtenstein's position and making renewed reference to treaties in connection with consequences of war Germany had already concluded with other countries having also been neutral during World War II. The Principality of Liechtenstein declared:

> "*Die Regierung des Fürstentums Liechtenstein, das im Zweiten Weltkrieg ebenfalls neutral war, bringt daher die Erwartung zum Ausdruck, daß die Regierung der Bundesrepublik Deutschland auch im Fall der jüngst betroffenen liechtensteinischen Staatsangehörigen in Verhandlungen mit dem Ziel eines gerechten Ausgleichs eintritt.*" (page 4 of the aide-mémoire)
>
> Translation:
> "The Government of the Principality of Liechtenstein, a country which had equally been neutral during World War II, therefore expresses to its expectation, that the Government of the Federal Republic of Germany will also commence negotiations in the matter of the Liechtenstein citizens affected of late, with the objective to reach a just compensation." (page 3 of the translation)

3.57 The Principality of Liechtenstein was all the more interested in a clarification of the matter in due course, as the Czech Republic had meanwhile expressly adopted the ruling of the German courts with respect to reparation confiscations as providing a legal justification for its own position. The declarations of the Principality of Liechtenstein and the Czech Republic of 25/26 May 1999 made in this context on the occasion of the 7th OSCE Economic Forum in Prague were also attached to the aide-mémoire.[39]

3.58 However, the German Foreign Minister Josef Fischer declared in his letter of 20 January 2000 (Annex 45) that the Federal Republic of Germany refused to enter into negotiations. In principle, the Government did not see any reason to grant compensation for a loss of Liechtenstein property either. The German Foreign Minister said:

> *"vielen Dank für Ihr Schreiben vom 9. Dezember 1999 und das beigefügte Aide-mémoire. Die Bundesregierung teilt die darin vertretene Rechtsauffassung bekanntlich nicht. Auch nach erneuter Prüfung der Sach- und Rechtslage sieht sie deshalb keine Möglichkeit, gegenüber dem Fürstentum Liechtenstein für die aufgrund von Nachkriegsenteignungen in der ehemaligen Tschechoslowakei erlittenen Vermögensverluste Kompensationsleistungen zu erbringen."*
>
> Translation:
> "Thank you very much for your letter of 9 December 1999 and the enclosed aide memoire. It is known that the German Government does not share the legal opinion expressed therein. Even upon renewed examination of the legal and factual position, they do not see a possibility to make compensation payments to the Principality of Liechtenstein for losses of property suffered as a result of post-war expropriations in former Czechoslovakia."

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[39] Declaration of the Liechtenstein Delegation of 25 May 1999 and the written reply of the Czech Republic, Attachments to Annex 44 of this Memorial.

## D. Decision to submit the dispute to the Court

3.59 Following the letter of 20 January 2000, the consultations between Germany and Liechtenstein had to be regarded as failed. Neither was Germany prepared to concede that its attitude towards Liechtenstein and Liechtenstein property was contrary to international law nor was Germany willing to accept any responsibility for this behaviour in terms of compensation. Therefore, Liechtenstein decided to submit the dispute to the Court.

# PART TWO

## THE CLAIMS OF LIECHTENSTEIN

## CHAPTER 4

# GERMANY'S FAILURE TO RESPECT LIECHTENSTEIN'S NEUTRALITY AND SOVEREIGNITY

## A. Overview

4.1 By virtue of its conduct in the period 1995 and subsequently, Germany violated the rights of Liechtenstein. By declaring Liechtenstein property to be German property, Germany failed to respect Liechtenstein's acknowledged status as a neutral State during World War II, as well as infringing its sovereignty. Germany committed both these violations by the same conduct, i.e. by applying the reparations regime to Liechtenstein property during this period.

4.2 The peace treaties concluded both after World War I[40] and World War II, included provisions on the question of reparations by the defeated States. There was no waiver of reparations arising from World War II in Europe, any more than there had been in 1919. The Peace Treaties concluded after World War II, as well as the regime concerning Germany which resulted from the Yalta and Potsdam Conferences as well as the Paris Agreement of 14 January 1946, imposed a duty of reparations on the defeated States. Each of the Peace Treaties actually concluded contained a section on "Reparation and Restitution" (for example Part V of the Peace Treaties with Bulgaria,[41] with Hungary[42] and with Romania,[43] Part IV of the Peace Treaty with Finland,[44] Part VI, Section I, of the Peace Treaty with Italy[45]) which provided the duty to make reparations for the losses caused to members of the Allied and Associated Powers by military operations and by the occupation. A similar provision was contained in the Peace Treaty with Japan of 1951.[46]

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[40] The duty to make reparations was reflected in Article 297 i) of the Treaty of Versailles; see below para. 5.37.

[41] *United Nations Treaty Series*, No. 643.

[42] *United Nations Treaty Series*, No. 644.

[43] *United Nations Treaty Series*, No. 645.

[44] *United Nations Treaty Series*, No. 746.

[45] *United Nations Treaty Series*, No. 747.

[46] *United Nations Treaty Series*, No. 1832.

4.3 No peace treaty as such was concluded with Germany. But no decision was ever made to relieve Germany of its obligation to make reparations. The leaders at the Yalta Conference, speaking on behalf of the Allied nations, agreed on exacting reparations from Germany. Consequently, the Protocol that was approved at the Yalta Conference (Annex 11) provided as follows:

> "1. Germany must pay in kind for the losses caused by her to the Allied nations in the course of the war. Reparations are to be received in the first instance by those countries which have borne the main burden of the war, have suffered the heaviest losses and have organised victory over the enemy..."

Hence, it was clear that reparations would be sought from Germany. The duty of reparations incumbent upon Germany was confirmed by the Paris Agreement of 14 January 1946 (Annex 13).

4.4 The mere fact that the Allies were only speaking on behalf of the Allied and Associated Powers did not mean that they were excluding reparations owed to neutrals arising from their status of neutrality during the War. Indeed, they could not exclude this obligation of reparations to neutral States. Neither, of course, did they entitle Germany to use neutral property (such as Liechtenstein property) to meet its duty of reparations.

4.5 The position of Germany taken in 1995 and subsequently denied that the German courts had jurisdiction over claims raised by Liechtenstein concerning the property of Liechtenstein nationals who had become subject of measures on account of their allegedly German status under the "Beneš Decrees" (Annexes 6, 7, 46). Germany sought to justify this denial by claiming that the reparations regime applied to Liechtenstein property, irrespective of Liechtenstein's neutrality during the War. By declaring this property as being subject to the reparations regime and applying the legal consequences prescribed by that regime, Germany treated the Liechtenstein property as property of a belligerent State, i.e. of Germany itself, and thereby breached its international obligation to respect the sovereignty and neutrality of Liechtenstein.

4.6 This new position of Germany constitutes a breach of Liechtenstein's rights arising out of its recognised status as a sovereign and neutral State during World War II. The breach materialised in the inclusion of Liechtenstein property in the reparations regime for Germany, and the treatment of Liechtenstein nationals as nationals of a belligerent State.

### B. Liechtenstein was a neutral State in World War II

4.7 As explained in Chapter 1, Liechtenstein's neutrality was established and generally recognised during the War.[47] That neutrality had an *erga omnes* effect, and was applicable vis-à-vis both Germany and Czechoslovakia. There can be no doubt as to the neutrality of Liechtenstein with regard to all States involved in the War. Correspondingly, Germany as a belligerent State was obliged to respect the neutrality of Liechtenstein during the War. In fact, it respected Liechtenstein neutrality at the time, and subsequently, until its change of position in and after 1995.

4.8 However, at no stage was Germany freed from the obligation to respect the status of Liechtenstein as a neutral State during the War, and not to treat its property as property taken by way of war reparations. The reparations regime which Germany applied to Liechtenstein property was a result of the legal status of Germany during World War II as the enemy of the Allied and Associated Powers.[48] It was only in 1995 and thereafter, i.e. more than fifty years after the end of the hostilities, that Germany applied this regime to Liechtenstein property. The decisive fact is that Germany, in and after 1995, applied to

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[47] See above paras. 1.1 to 1.9.

[48] See above paras 2.1 *et seq.*

Liechtenstein property a regime which resulted from the status of Germany and its allies as enemy countries during the War. In this regard, the application of the reparations regime is conditioned by the status of the State concerned as a belligerent rather than a neutral. But Liechtenstein was indisputably not a belligerent during the War. On the contrary, its status as a neutral was expressly recognized, including by Germany. Nor has any State, including Germany, ever argued that Liechtenstein violated its duty of neutrality, or that individuals of Liechtenstein nationality acted in non-neutral ways, so as to justify treating their property as effective enemy property. It is for this reason that Germany had to respect the status of neutrality of Liechtenstein in respect of any action concerning the legal regime resulting from the War. This is a continuing obligation and applies to action taken at any time up to the present.

### C. The law of neutrality

4.9 The law of neutrality is mainly embodied in the Convention respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, signed at The Hague, 18 October 1907, and the Convention concerning the Rights and Duties of Neutral Powers in Naval War, signed at The Hague, 18 October 1907 (Hague Conventions V and XIII).[49] Germany is and at all relevant times was party to the two Hague Conventions.[50] These Conventions grant the belligerent powers only limited rights to requisition or the use of neutral property, i.e. property of a neutral State or its nationals (as long as the latter fall within the definition of neutral persons). These rights include the right of belligerent States to seize war materials or contraband destined for the enemy, and certain rights relating to railway material according to Article 10 of Hague Convention V. These rights constitute an exception to the general rule that the property of neutral States and their nationals has to be respected even in times of war. These exceptions are to be narrowly construed.[51] In no case do these Conventions entitle a belligerent State to use neutral property for the purpose of meeting its reparation duties arising from damage caused during a war. Hague Convention XIII likewise does not grant such a right.

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[49] Official Gazette of the German Reich (*Reichsgesetzblatt*) 1910, pp. 107 *et seq.*

[50] Official Gazette of the German Reich (*Reichsgesetzblatt*) 1910, p. 151 and p. 343.

4.10 Since Liechtenstein is not a party to the Hague Conventions, customary international law concerning neutrality applies to the relations between Germany and Liechtenstein. However, the Hague Conventions are generally viewed as reflecting the existing customary international law on neutrality. This is evidenced by reference to State practice, *opinio iuris* and judicial decisions.

4.11 For instance, the uniform *Rules of Neutrality* adopted by the Northern Countries in 1938 are based on the principles of Hague Convention XIII.[52] Likewise, the Swiss Federal Council stated in 1993 that

> "les droits et les obligations existants entre les belligérants et les Etats neutres dans le cadre d'un conflit armé sont régis par le droit de la neutralité. Ce droit s'est transformé au XIXe siècle en droit coutumier et a été en partie codifié dans deux conventions du 18 octobre 1907 signées lors de la deuxième Conférence de la paix de La Haye."[53]

International judicial practice confirms the customary nature of the rules embodied in the Hague Conventions. In *Damage caused by Germany in the Portuguese Colonies in South Africa* (1928),[54] the arbitral tribunal based its decision on Article 11 of Hague Convention V, although the Convention was not applicable *ratione personae* in the circumstances of that case. Thus the Tribunal considered Hague Convention V as reflecting customary international law. In *Attiliò Regolo and Other Vessels* (1945), the Sole Arbitrator held that the entire Hague Convention XIII was declaratory of customary international law as it stood in 1907.[55] In his separate opinion to the advisory opinion of this Court on the *Legal consequences for States of the continued presence of South Africa in Namibia (South West Africa) notwithstanding Security Council resolution 276 (1970)* of 21 June 1971, Judge Ammoun cited the Hague Conventions as cornerstones of the "status of neutrality".[56]

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[51] *Lotus* case, 1927 PCIJ, Ser. A, No. 10, p. 18.

[52] E. Castrén, *The Present Law of War and Neutrality*, Acad. Scientarum Fennicae, Helsinki, 1954, pp. 436 *et seq.*; E. Hambro, "Das Neutralitätsrecht der nordischen Staaten", 8 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 1938, pp. 445 *et seq.*, pp. 468 et *seq.*

[53] L. Caflisch, "La pratique suisse en matière de droit international public 1993", 4 *Revue suisse de droit international et de droit européen* 1994, pp. 597 *et seq.*, p. 629.

[54] UNRIAA, Vol. II, pp. 1013 *et seq.*, p. 1027.

4.12 The core of the law of neutrality undoubtedly forms part of general customary international law. During the proceedings before this Court on the advisory opinion concerning the *Legality of the Threat or Use of Nuclear Weapons*, a number of governments referred to the principle of neutrality. The Court confirmed this view, since it found...

> "that as in the case of the principles of humanitarian law applicable in armed conflict, international law leaves no doubt that the principle of neutrality, whatever its content, which is of a fundamental character similar to that of the humanitarian principles and rules, is applicable (subject to the relevant provisions of the United Nations Charter), to all international armed conflicts, whatever type of weapons might be used."[57]

4.13 The customary international law of neutrality imposes duties on neutrals as well as the belligerent States. As Schwarzenberger puts it, the

> "counterpart to the duty of the neutral Powers to safeguard their position of neutrality and, in particular, to prevent their territories

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[55] G. Schwarzenberger, *International Law as Applied by International Courts and Tribunals*, Vol. II, *The Law of Armed Conflict*, Stevens, London, 1968, p. 571.

[56] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276, 1970*, Advisory Opinion of 21 June, *I.C.J. Reports* 1971, p. 93.

[57] *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July, *I.C.J. Reports* 1996, pp. 226 *et seq.*, p. 261, para. 89.

> from being used as bases for hostile operations, is that of belligerents to respect the rights of neutral Powers."[58]

These rights of the neutral States are already expressed in Article I of Hague Convention XIII, according to which "belligerents are bound to respect the sovereign rights of neutral powers".

4.14 The basic and generally recognized duty in this regard is the duty of the belligerent State to respect a specific status of the neutral State, involving impartiality and neutrality. This duty is well established. According to Oppenheim/Lauterpacht "the duties of belligerents are, in the first place, to act towards neutrals in accordance with their attitude of impartiality; and, secondly, not to suppress their intercourse, and in particular their commerce, with the enemy".[59] As to the first mentioned duty, the authors continue that...

> "the contents of the duty of belligerents to treat neutrals in accordance with their impartiality are so manifest that elaborate treatment is unnecessary. This duty excludes, in the first place, any violation of neutral territory for military or naval purposes of the war, and any interference with the legitimate intercourse of neutrals with the enemy; and, secondly, the appropriation of neutral goods, contraband excepted, on enemy vessels. On the other hand, it includes, in the first place, due treatment of neutral diplomatic envoys accredited to the enemy and found on occupied enemy territory; and, secondly, due treatment of neutral subjects and neutral property on enemy territory."[60]

4.15 Thus there exists a rule of general international law according to which the neutral status has to be respected by every belligerent. Any breach of this duty, in particular with regard to neutral property, is to be qualified as a wrongful denial of the neutrality of the State whose nationals are concerned as owners of the property, and entails the international responsibility of the belligerent and thus the duty to make compensation. Such a failure to respect neutrality may consist in the interference with neutral property, as well as the disrespect of the neutral status of the nationals.

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[58] G. Schwarzenberger, *International Law as Applied by International Courts and Tribunals*, Vol. II, *The Law of Armed Conflict*, Stevens, London, 1968, p. 565.

[59] Oppenheim/Lauterpacht, *International Law*, Vol. II, 7th ed., Longman, London, 1952, p. 674.

[60] *Ibid*, p. 676. This view is confirmed by other authors, such as E. Castrén, *The Present Law of War and Neutrality*, Acad. Scientarum Fennicae, Helsinki, 1954, p. 488; G. Schwarzenberger, *International Law as Applied by International Courts and Tribunals*, Vol. II, *The Law of Armed Conflict*, Stevens, London, 1968, p. 583; and Ch. Rousseau, *Le droit des conflits armeés*, A. Pedone, Paris, 1983, pp. 371 *et seq*.

4.16 This is confirmed by many arbitral and judicial decisions. In *Karmatzucas v. Germany* (1926), the German-Greek Mixed Arbitral Tribunal established Germany's responsibility for requisition of property belonging to a neutral national resident in an occupied territory.[61] In *Evghenides v. Germany*, the same Tribunal held that the requisition of a number of African workers employed by the claimant, a neutral national, became illegal as it was not followed by an indemnity: the requisition was therefore considered to constitute an "act committed" which under article 297 of the Peace Treaty of Versailles[62] engaged the responsibility of Germany.[63] The duty to make reparations for the failure to respect the special status of neutral States by interfering with the property of their nationals was also confirmed in the case *Goldenberg et Fils v. Germany* (1928)[64] as well as the *Union Bridge Company Case (United States v. Great Britain)*. According to the decision in the latter case, Great Britain committed "a wrongful interference with neutral property". The Tribunal continued:

> "The action constituted an international tort, committed in respect of neutral property, and falls to be decided not by reference to nice distinctions between trover, trespass and action on the case, but by reference to that broad and well-recognized principle of interna-

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[61] Recueil des décisions des tribunaux arbitraux mixtes institués par les traités de paix, Vol. VII, pp. 17 *et seq.*, p. 22.

[62] Official Gazette of the German Reich *(Reichsgesetzblatt)* 1919, p. 687.

[63] Recueil des décisions des tribunaux arbitraux mixtes institués par les traités de paix, Vol. IX, pp. 692 *et sec.*, p. 694.

[64] UNRIAA, Vol. II, pp. 903 *et seq.*, pp. 909-910.

> tional law which gives what, in all circumstances, is fair compensation for the wrong suffered by the neutral owner."[65]

4.17 There are numerous further instances which confirm the duty of belligerents to respect neutral property. These include, for example, the German agreement to compensate the United States for losses from the *Lusitania* sinking.[66] As late as the 1970s, Greece was still raising claims against Germany for the sinking of Greek merchant ships at a time when Greece was neutral.[67]

4.18 Belligerent States are also obliged to respect the neutral status of the nationals of neutral States. Thus Hague Convention V refers to "neutral persons" and specifies under which circumstances these persons lose their right to invoke their neutrality. Articles 16 - 18 provide as follows:

> "Neutral Persons
>
> Article 16
>
> The nationals of a State which is not taking part in the war are considered as neutrals.
>
> Article 17
>
> A neutral cannot avail himself of his neutrality
>
> (a) If he commits hostile acts against a belligerent;
>
> (b) If he commits acts in favor of a belligerent, particularly if he voluntarily enlists in the ranks of the armed force of one of the parties.
>
> In such a case, the neutral shall not be more severely treated by the belligerent as against whom he has abandoned his neutrality than a national of the other belligerent State could be for the same act.

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[65] UNRIAA, Vol. VI, pp.138 *et seq.*, p. 141.

[66] UNRIAA, Vol. VII, p. 32.

[67] 47 ILR, p. 418.

Article 18

> The following acts shall not be considered as committed in favour of one belligerent in the sense of Article 17, letter (b):
>
> (a) Supplies furnished or loans made to one of the belligerents, provided that the person who furnishes the supplies or who makes the loans lives neither in the territory of the other party nor in the territory occupied by him, and that the supplies do not come from these territories;
>
> (b) Services rendered in matters of police or civil administration."

These provisions reflect the corresponding rule under customary international law. This aspect of the law of neutrality was for instance emphasised in a *Note concertée* of the French Foreign Minister and the French Minister of Trade of 10 September 1861 where it was stated:

> "Un belligérant ne peut employer, pour nuire à son ennemi, aucun moyen qui frappe directement les peuples restés étrangers à la lutte."[68]

The neutral character of individual persons results from their being nationals of a neutral State. The factual or legal consequences of the war entail a continuing duty, even after the cessation of the war, to respect the specific status which the neutral State has taken during the war, and to do so as long as any unresolved question arising from the war is at issue. In the present case, such legal consequences are bound up with the reparations regime established as a result of World War II. Thus, although World War II has long been ended, Germany still has the obligation to respect the neutral status of Liechtenstein as well as of its nationals and their property, if and to the extent it applies legal rules which have their origin in, and are a consequence of, World War II.

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[68] A. C. Kiss, *Répertoire de la pratique française en matière de droit international public*, Editions du Centre national de la recherche scientifique, Vol. VI, 1969, p. 558, No. 1076.

### D. Germany's violation of the law of neutrality

4.19 Despite its duty to respect the neutrality of Liechtenstein and of its nationals, Germany applied the post-war reparations regime to Liechtenstein property in and after 1995; indeed it does so up to the present.

4.20 According to the regime of reparations established as a consequence of World War II, Germany was bound to make reparations for losses suffered arising from the war. As an aspect of this regime, the Allied Powers were entitled to use property belonging both to Germany as a State and to German nationals in order to provide compensation for war damages.[69] As a corollary, Germany acknowledged its obligation, as reflected in Article 5 of Chapter Six of the Settlement Convention (Annex 16), to make compensation to those German nationals whose property was thereby affected. It was thus of cardinal importance to define and fix on a stable basis the scope of the reparations regime, and to avoid any subsequent changes in that regime detrimental to neutral States and their nationals.

4.21 In view of the objective of these post-war reparations, they could only be taken against property of Germany as an enemy country and against German nationals, i.e. exclusively against property qualified as "enemy property". A condition for the use of private property for reparation purposes was that this property was owned by individuals possessing the nationality of a belligerent State, i.e. Germany. This condition was firmly established in the instruments forming the basis of the reparations regime.

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[69] See above paras 2.1 *et seq.*

4.22 Already at Yalta (Annex 11), this restriction to Germany as enemy country was made very clear:

> "1. Germany must pay in kind for the losses caused by her to the Allied nations in the course of the war."

At Potsdam in 1945 (Annex 12) this restriction to Germany was reiterated.

4.23 Hence, the whole reparations regime could not and did not affect neutral States such as Liechtenstein, and their nationals. This was not only or even primarily because such States and their nationals were not bound by those treaties; it had a more fundamental rationale associated with the basic principles of the laws of war and neutrality to which the treaties gave effect. Neutral States and their nationals cannot be the object of measures which subject property to the post-war reparations regime.

4.24 In its position taken in 1995 and subsequently, Germany has admitted that the measures taken under the "Beneš Decrees" were directed against "enemy property", whether or not they were deemed to be reparation measures.[70] As was stated by Germany before the European Court of Human Rights (Annex 36):

> "On the contrary, in their interpretation of Article 3 para. 1 of Chapter Six of the Settlement Convention ("purpose of reparation or restitution, or as a result of the state of war, or on the basis of agreements concluded, or to be concluded, by the Three Powers with other Allied countries, neutral countries or former allies of Germany") the courts have found that, going beyond the classical notion of reparation, this provision is intended to cover measures against 'enemy property' more generally." (page 16 of the Memorial)

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[70] However, the fact that Germany now accepts that the taking of the Liechtenstein property is part of the reparations regime injustly enriches Germany as will be demonstrated below in Chapter 6, section B.

In both consultation meetings between Liechtenstein and Germany on 10 July 1998 and on 14 July 1999, Germany took the position that this understanding of "enemy property" applied not only to the particular painting that was the subject of the dispute before the European Court of Human Rights, but to the Liechtenstein property in general.

4.25 It is a fact that this new German position relates to property belonging to Liechtenstein nationals, and that it treats such property as covered by the post-war reparations regime. It is also undisputed at the international level that such property was in no case German, and was not to be treated as enemy property for the purposes of the post-war reparations regime, in particular by Germany.

4.26 It has been shown above that the law of war does not give a right to belligerents to disregard neutral status. The exceptional cases in which such disregard may be permitted are not applicable to the present case. These exceptions concern unneutral services of neutrals or transport of contraband. Neither of these two situations could apply to the property in question, and the contrary has not been suggested.

4.27 Following the decision of the Federal Constitutional Court of 28 January 1998 (Annex 32) and in support of this decision, German official statements declared it reasonable to regard Liechtenstein nationals as German nationals (Annex 36).[71] Germany thus treated Liechtenstein nationals who had been neutral during World War II as if they were nationals of one of the belligerent States, namely Germany. This is to be considered as a disregard for Liechtenstein's neutrality.

4.28 In and after 1995, in disregard of these obligations, Germany denied the Liechtenstein nationality of these persons, regarded them as German nationals for the purposes of the reparations regime, and consequently denied their neutral character. It treats Liechtenstein as if the latter had been a belligerent during World War II. Since Germany had expressly recognised that Liechtenstein was neutral during World War II, it was under a particular duty to respect the neutral status of Liechtenstein.

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[71] Annex 36, p. 14.

### E. The breach of the duty to respect the neutral character of Liechtenstein and of Liechtenstein nationals gives rise to a claim of the neutral State

4.29 The breach of the duty of a belligerent State to respect the specific status of a neutral State gives rise to a claim of the neutral State. Hague Convention XIII is unequivocal in this respect when it specifies that "neutral states have an equal interest in having their rights respected by belligerents". These rights include the treatment of their nationals as neutrals and, consequently, of their property as neutral property. Any violation of the neutrality of a State, including the neutral character of its nationals, generates a direct claim of the neutral State itself. Thus Brownlie includes "wrongful interference with neutral property" in his calendar of causes of actions giving rise to State responsibility.[72] Similarly Schwarzenberger states that international responsibility is involved if the action taken by the belligerent against neutral nationals or property is contrary to the law of war.[73] Rousseau writes that the "observation des règles relatives au respect des obligations découlant de la neutralité est sanctionnée par la mise en cause éventuelle de la responsabilité internationale de l'Etat".[74]

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[72] I. Brownlie, *System of the Law of Nations. State Responsibility*, Clarendon Press, Oxford, 1983, p. 79. See also *ibid*, p. 238 (violations of neutrality as a form of direct injury to the State interest).

[73] G. Schwarzenberger, *International Law as Applied by International Courts and Tribunals*, Vol. II, The Law of Armed Conflict, Stevens, London, 1968, pp. 550 *et seq*., p. 576.

[74] Ch. Rousseau, *Le droit des conflits armés*, A. Pedone, Paris. 1983, p. 514. In the same sense P. Guggenheim, *Traité de Droit international public*, Vol. II, Georg, Geneva, 1954, p. 511: "Ce sont en principe les normes sur le délit international et les sanctions qu'il déclenche qui sont applicables aux violations de la neutralité, que celles-ci soient le fait des belligérents ou des neu-

4.30 In the present case Germany breached the right of Liechtenstein as a neutral State, viz., that its nationals and their property be treated as neutral. International law requires that nationals of neutral states are to be treated as neutral persons as long as these persons are not acting in an unneutral way, as stipulated in Article 17 of Hague Convention V, or are also of the belligerent's nationality.

4.31 Since neutrality is a legal status of a State, which becomes manifest, *inter alia*, in the treatment of its property and that of its nationals, any denial or disregard of the neutral character of this property necessarily affects the rights of the neutral State. By denying the treatment of this property as a neutral property, the belligerent State necessarily denies the neutral status of the State since neutral persons acquire their status by virtue of their status as nationals of the neutral State. Any interference with this status of neutrality entails an injury to the neutral State.

### F. Germany's failure to respect Liechtenstein's sovereignty

4.32 The equation of Liechtenstein nationals with German nationals in the context of the post-war reparations regime furthermore violates Liechtenstein's sovereignty. Neutrality directly concerns the status, in particular the scope and extent of sovereignty, of the neutral State in time of war.[75] The principle of sovereign equality of States includes, *inter alia*, the right of each State freely to choose and develop its political system,[76] for instance by deciding to remain

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tres". See also P. Daillier and A. Pellet, *Droit international public (Nguyen Quoc Dinh)*, L.G.D.J., Paris, 1999, 6th ed., p. 940.

[75] K. Hailbronner, "Der Staat und der Einzelne als Völkerrechtssubjekt", in W. Graf Vitzthum, *Völkerrecht*, 2nd ed., Walter de Gruyter, Berlin, 2001, pp. 212-213, where a declaration neutrality is considered as an exercise of sovereign jurisdiction.

[76] Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, GA Res. 2625 (XXV) (1970).

neutral. Neutrality is a manifestation of and therefore inseparably linked with the sovereign equality of States. Accordingly, Principle I of the Final Act of the Conference on Security and Cooperation in Europe of 1975, which deals with the sovereign equality of States and respect for the rights inherent in sovereignty, refers to the right of every State to declare itself as neutral.[77]

4.33 In 1995 and subsequently, the German courts applied Article 3 (1) of Chapter Six of the Settlement Convention (Annex 16) to Liechtenstein nationals although the application of this provision is confined to "German external assets or other property". The word "German" in Article 3 (1), as will be established in Chapter 5 of this Memorial,[78] refers to the nationality of the owner of the seized property, irrespective of the ethnicity of the owner of the seized assets or property.[79] In other words, Article 3 (1) of Chapter Six applies only to the property of nationals of the Federal Republic of Germany and not to those of other States. By applying this provision to Liechtenstein nationals, Germany extended the scope *ratione personae* of the treaty provisions, contrary to the ordinary meaning to be given to the terms of the treaty in their context and in the light of the treaty's object and purpose.

4.34 In the present case, the interference with the sovereign rights of Liechtenstein lies in the fact that by extending the scope of the Settlement Convention to Liechtenstein nationals, Germany ultimately treats them like its own nationals, without any justification for doing so. That this German conduct amounts to a violation of Liechtenstein's sovereignty is widely accepted, in particular in German doctrine.[80]

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[77] Conference on Security and Co-Operation in Europe, Final Act, 1 August 1975, 14 ILM 1292, 1294 (1975), Principle I.

[78] See below paras. 5.9 *et seq*.

[79] K. Doehring, "Völkerrechtswidrige Konfiskation eines Gemäldes des Fürsten von Liechtenstein als "deutsches Eigentum": Ein unrühmlicher Schlusspunkt", 18 *Praxis des Internationalen Privat- und Verfahrensrechts* 1998, pp. 465 *et seq*., p. 466; B. Fassbender, "International Decisions", 93 *American Journal of International Law* 1999, pp. 215 *et seq*., *p.* 218; *idem*, "Klageausschluß bei Enteignungen zu Reparationszwecken - Das Gemälde des Fürsten von Liechtenstein", *Neue Juristische Wochenschrift* 1999, pp. 1445 *et seq*., p. 1447.

4.35 Germany violated Liechtenstein's sovereignty in three ways. First, it treated Liechtenstein nationals as German nationals for the purpose of reparations; secondly, this equal treatment amounts to a *de facto* involuntary conferment of nationality without any reasonable relationship of the Liechtenstein nationals to Germany, let alone an effective or genuine link; and thirdly, this equation is made solely to the detriment of the Liechtenstein nationals, in that they are deprived of their property but, contrary to German nationals, do not receive any benefit, in particular compensation.

### 1. Germany may not treat Liechtenstein nationals as its own nationals for reparation purposes

4.36 Nationality is the status of a natural person who is attached to a State by a specific tie of allegiance which forms the basis for personal rights and duties of the individual under domestic and international law.[81] In other words, the enjoyment of these personal rights by the individual, such as the right to vote, or the obligation of the individual to perform specific personal duties towards the

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[80] I. Seidl-Hohenveldern, "Völkerrechtswidrigkeit der Konfiskation eines Gemäldes aus der Sammlung des Fürsten von Liechtenstein als angeblich "deutsches" Eigentum", 16 *Praxis des Internationalen Privat- und Verfahrensrechts* 1996, pp. 410 et *seq.*; *idem*, "Nachwirkung der Kontrollratsgesetzgebung und die deutsche Souveränität - Zu den Urteilen über die "Bodenreform" und zur Fortgeltung des Klagestops nach dem Überleitungsvertrag", in V. Götz/P. Selmer/R. Wolfrum (eds.), *Liber Amicorum Günther Jaenicke - Zum 85. Geburtstag*, Springer, Berlin, 1998, pp. 975 *et seq.*, pp. 983, 984; H. Weber, "Anmerkung zur "Liechtenstein-Entscheidung" des Bundesverfassungsgerichts vom 28. Januar 1998", 36 *Archiv des Völkerrechts* 1998, pp. 188 *et seq.*, p. 192; K. Doehring, "Völkerrechswidrige Konfiskation eines Gemäldes des Fürsten von Liechtenstein als "deutsches Eigentum": Ein unrühmlicher Schlusspunkt", 18 *Praxis des Internationalen Privat- und Verfahrensrechts* 1998, pp. 465 *et seq.*, p. 466.

[81] *Nottebohm* case, *I.C.J. Reports* 1955, p. 23. See also P. Weis, *Nationality and Statelessness in International Law*, 1979, p. 29; D.P. O'Connell, *International Law*, Vol. 2, 2nd ed., Stevens, London, 1970, p. 670 *et seq.*; Sir R. Jennings and Sir A. Watts, (eds.) *Oppenheim's International Law*, Vol. 1, 9th ed., Longman, London, 1992, p. 857, § 379; Ch. Rousseau, *Droit international public*, Vol. V, *Les rapport conflictuels*, Sirey, Paris, 1983, p. 101; I. Seidl-Hohenveldern/T. Stein, *Völkerrecht*, 10th ed., Heymanns, Köln, 2000, p. 234.

State, such as the duty of military service, presuppose that the individual has the nationality of the relevant State. It is generally recognised that control over matters of nationality is a concomitant of State sovereignty itself and that these matters fall under the personal supremacy of the State.[82] Therefore, a State cannot treat foreigners completely according to discretion particularly in respect of those matters which concern the personal relationship between an individual and his State. For example, a State calling up foreigners for military service violates the sovereignty of the State of nationality of these individuals, at least if these individuals do not have any connection or link whatsoever with that State.[83]

4.37 Likewise, if a State accepts in its legal order that individuals have to contribute, in certain circumstances, with their private property to meet international reparation obligations imposed on that State, such a duty is exclusively effective on the ground of nationality. Since the obligation to provide reparations is an obligation of the responsible State, any contribution to this obligation by individuals (whether voluntary or, as in the present case, prescribed by the German legal order) has its foundation in the public interest of the State,[84] in that it reduces the amount of reparations due by the responsible State.[85] In other words, such an obligation of individuals to contribute to the fulfilment of the State's reparation obligations is a "personal" obligation, similar to that of military service, which a State may only exact from its own nationals.

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[82] P. Weis, *Nationality and Statelessness in International Law*, 1979, p. 65; A. Verdross, *Völkerrecht* 5th ed., Springer, Wien, 1964, p. 307; Ch. Rousseau, *Droit international public*, Vol. III, *Les compétences*, Sirey, Paris, 1983, p. 134.

[83] I. Seidl-Hohenveldern/T. Stein, *Völkerrecht*, 10th ed., Heymanns, Köln, 2000, p. 234; Sir R. Jennings and Sir A. Watts, (eds.) *Oppenheim's International Law*, Vol. 1, 9th ed., Longman, London, 1992, p. 907.

[84] This was recognized by the German Federal Court of Justice, see, e.g., Collection of the Decisions of the Federal Court of Justice in Civil Law Matters *(BGHZ)*, Vol. 13, pp. 83 *et seq.*

[85] See I. Seidl-Hohenveldern, , *Entschädigungspflicht der Bundesrepublik für reparationsbezogenes Auslandsvermögen. Völkerrechtliche Begründung*, Verlagsgesellschaft Recht und Wirtschaft, Heidelberg, 1962, p. 169.

4.38 Therefore, a State obliged to provide reparations may only resort to the property of its own nationals in order to meet its reparation obligations. If it extends this duty to non-nationals, it will thereby violate the personal authority or supremacy, and thus the sovereignty, of their State of nationality. By including the property of Liechtenstein nationals into the reparations regime, Germany violated the sovereignty of Liechtenstein.

### 2. The treatment by Germany of Liechtenstein nationals amounts, *pro tanto*, to an unlawful involuntary *de facto* naturalization

4.39 According to the decision of this Court in the *Nottebohm* case,

> "nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties".[86]

Any conferment of nationality by a State on individuals who are nationals of other States, who do not have any link to the State conferring its nationality and who do not consent to such conferment infringes the sovereignty of the State of nationality of the individual and is a breach of international law.[87] Such conduct amounts to a forced conferment of nationality by individuals which occurs not only if the State formally confers its nationality upon foreign nationals against their will, but also if it applies its national law on the basis of allegiance.

4.40 The effects of the position taken by Germany in and after 1995 are comparable, *pro tanto*, to those of a forced imposition of nationality, which is considered as being in violation of international law, precisely because it is a violation of the personal supremacy and hence sovereignty of the State of nationality. While it is clear that the German authorities did not intend to confer *de jure* nationality upon the Liechtenstein nationals in question, they nevertheless treated them as German nationals by applying to them and their property Article 3 (1) and (3) of Chapter Six of the Settlement Convention, whose application is explicitly confined to "German nationals". Thus Germany considered and still considers Liechtenstein nationals as German nationals *pro tanto*, and does so without their consent or the consent of Liechtenstein.

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[86] *Nottebohm* case, *I.C.J. Reports* 1955, p. 23.

[87] *In re* Rau, German-Mexican Claims Commission, 14 January 1930, 6 *Annual Digest p.* 251; *Flegenheimer Claim*, Italian-US Conciliation Commission, 20 December 1958, 25 *ILR*, pp. 91 *et seq.*, p. 112; *Compulsory Acquisition of Nationality* case, Court of Appeal of Cologne, 16 May 1960, 32 *ILR*, pp. 166 *et seq.*, p. 167.

4.41 Moreover, the treatment of Liechtenstein nationals as if they were German nationals is even less justified in view of the fact that the Liechtenstein nationals do not have any link to Germany. As is well known, the Court held in the *Nottebohm* case that the conferment of nationality requires a genuine or effective link on the part of the individual to the State.[88] Moreover, if a State applies its nationality laws to a large number of nationals of a particular foreign State without their consent, such conduct constitutes an encroachment upon the jurisdiction and personal supremacy of that State and must be regarded as an unfriendly or even hostile act against the State of nationality comparable to a violation of the State's territorial jurisdiction.[89]

4.42 In the present case, Germany considers the Reigning Prince of Liechtenstein as an owner of "German external assets or other property" pursuant to Article 3 of Chapter Six of the Settlement Convention. Moreover it is clear that all other Liechtenstein nationals having assets or other property located in the former Czechoslovakia and affected by the measures taken under the "Beneš Decrees" are also regarded by Germany as falling under Article 3 (1) and (3) of Chapter Six of the Settlement Convention. By so doing, Germany has violated the personal jurisdiction and authority of Liechtenstein over its nationals.

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[88] *Nottebohm* case, *I.C.J. Reports* 1955, p. 23.

[89] Weis, *Nationality and Statelessness in International Law*, 2nd ed., 1979, p. 112.

4.43 Furthermore Germany treats Liechtenstein nationals as German nationals *pro tanto*, only to their detriment. Germany included Liechtenstein nationals in the Settlement Convention only after the duty of Germany to compensate according to Article 5 of Chapter Six of the Settlement Convention had been terminated. Germany thus deprived Liechtenstein nationals of any right to obtain compensation for the inclusion of their property in the reparations regime. Whereas German nationals from the outset fell under the regime established by Articles 3 and 5 of Chapter Six of the Settlement Convention and thus could obtain compensation, Liechtenstein nationals were not considered as being subject to that regime as long as compensation was ensured. It was only after Article 5 of Chapter Six of the Settlement Convention had been terminated and compensation therefore was no longer available that Germany changed its position. Thus Liechtenstein nationals were considered as German nationals only with regard to the negative effects of the reparations regime, and thus only at their expense and to their detriment, without at the same time granting them also the benefits of that situation, which were granted to German nationals properly called.

## CHAPTER 5

# GERMANY'S OBLIGATIONS OF COMPENSATION FOR PROPERTY BROUGHT WITHIN THE REPARATIONS REGIME

## A. Germany's interference with Liechtenstein property rights

5.1 By taking its new position in and after 1995, Germany interfered with property and other economic rights of Liechtenstein nationals since it declared their property to be German property which could be used for reparation purposes. Germany was not entitled to do this, since Chapter Six of the Settlement Convention (Annex 16) does not relate to Liechtenstein property, and cannot lawfully be extended to include such property.

### 1. The Settlement Convention does not relate to Liechtenstein property

5.2 Chapter Six of the Settlement Convention, which excludes German jurisdiction in respect of a certain category of claims, does not contain any provision which could lawfully be applied by Germany to Liechtenstein and its nationals. Chapter Six only relates to German property. This restriction results from the clear wording of the Convention itself as well as from the latter's object and purpose. Indeed the text is unequivocal in respect of its scope of application. Article 3 (1) and (3) of Chapter Six of the Settlement Convention (Annex 16) reads as follows:

> "1. The Federal Republic shall in the future raise no objections against the measures which have been, or will be, carried out with regard to German external assets or other property, seized for the purpose of reparation or restitution, or as a result of the state of war, or on the basis of agreements concluded, or to be concluded, by the Three Powers with other Allied countries, neutral countries or former allies of Germany.
>
> ...
>
> 3. No claim or action shall be admissible against persons who shall have acquired or transferred title to property on the basis of the measures referred to in paragraph 1... of this Article, or against international organizations, foreign governments or persons who have acted upon instructions of such organizations or governments."

Paragraph 3 refers to the measures defined in paragraph 1. Paragraph 1 stipulates two criteria which must attach to the measures in question. First, they must be measures which have been (or will be) carried out with regard to German external assets or other property. Second, the objective or basis of the measures must have been either reparation, restitution, the result of the state of war or an agreement concluded by the Three Powers (i.e., France, United Kingdom and United States) with other Allied countries, neutral countries or former allies of Germany.

5.3 In the present case, the first criterion already excludes Liechtenstein property from the scope of the Settlement Convention. It is only German property which is addressed by that provision. By no stretch of imagination can it be established that this provision of the Settlement Convention was intended to cover also third States and nationals of third States. The qualifier "German" used in Article 3 of Chapter Six of the Settlement Convention applies not only to "external assets" but likewise to "other [German] property". It defines the permissible scope of the post-war reparations regime.

5.4 In order to establish whether Chapter Six of the Settlement Convention could relate also to non-German property, this provision has to be interpreted according to the applicable rules of international law. Although the Settlement Convention dates back to 1954, its interpretation has to conform to the rules of interpretation as embodied in Article 31 of the Vienna Convention on the Law of Treaties of 1969, which reflect customary international law. In this regard, this Court in the *Kasikili/Sedudu* case reaffirmed:

> "that customary international law found expression in Article 31 of the Vienna Convention (see *Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994*, p. 21, paragraph 41; *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 1996 (II)*, p. 812, paragraph 23). Article 4 of the Convention, which provides that it 'applies only to treaties which are concluded by States

> after the entry into force of the… Convention with regard to such States' does not, therefore, prevent the Court from interpreting the 1890 Treaty in accordance with the rules reflected in Article 31 of the Convention."[90]

5.5 Article 31 of the Vienna Convention provides as follows:

> "General rule of interpretation
>
> 1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
>
> 2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
> (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
> (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
>
> 3. There shall be taken into account, together with the context:
> (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
> (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
> (c) any relevant rules of international law applicable in the relations between the parties.
>
> 4. A special meaning shall be given to a term if it is established that the parties so intended."

5.6 If a special meaning of an expression used in the treaty is invoked, then the parties to the treaty must have explicitly agreed upon such a special meaning. Since the Settlement Convention does not stipulate a special meaning in the sense of Article 31 (4) of the Vienna Convention to the term "German external assets or other property", the ordinary meaning in the sense of Article 31 is decisive.

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[90] *Case concerning Kasikili/Sedudu Island* (Botswana/Namibia), *I.C.J. Reports* 1999, pp. 1045 *et seq.*, p. 1059, para. 18 (Judgment of 13 December).

### (a) Interpretation according to the ordinary meaning

5.7 The ordinary meaning of the expression "German external assets or other property" as used in the Settlement Convention is unequivocal. Where the Settlement Convention refers to German property, it means property in the possession of German nationals, either natural or juridical persons. Nationality in this sense is the nationality granted by national legislation of the State whose nationality is being referred to.[91]

5.8 Liechtenstein nationals affected by the change of Germany's position never acquired German nationality, whether by a formal procedure or by *ex lege* conferment of nationality or in any other way. Thus according to German national law, Liechtenstein nationals do not have German nationality, and the qualification of Liechtenstein nationals as German nationals does not correspond to the ordinary meaning of the word "German" in the Settlement Convention.

5.9 Contrary to the use of the relevant terms in the Settlement Convention, the Beneš Decree No. 12 (Annex 6) defined the term "German" exclusively on the basis of the belonging to a "people". Section 1 (1) (a) of the Decree, that lists the persons affected by confiscation measures under the Decree states:

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[91] Ch. Rousseau, *Droit international public*, Vol. III, Les compétences, 1977, p. 134; P. Reuter, *Droit international public*, Presses Univ. de Paris, Paris, 1983, p. 274; Sir R. Jennings and Sir A. Watts, (eds.) *Oppenheim's International Law*, Vol. 1, 9th ed., Longman, London, 1992, p. 853. This principle is reflected in Article 3 of the European Convention on Nationality (European Treaty Series, 6 November 1997, No. 166), which reads:

"1. Each State shall determine under its own law who are its nationals.

2. This law shall be accepted by other States in so far as it is consistent with applicable international conventions, customary international law and the principles of law generally recognised with regard to nationality."

> "a) *vsech osob německé a mad'arské národnosti, bez ohledu na statni prislusnost,*"
>
> Translation:
> "a) All persons belonging to the German and Hungarian people regardless of their nationality,"

This Decree does not aim at conferring or attributing nationality in the sense of the law on nationality when it speaks about belonging to the German or Hungarian "people". It clearly distinguishes between "*národnost*" in the sense of belonging to a "people" and "*státní přislušnost*" in the sense of the legal status of nationality. This distinction is also illustrated by Constitutional Decree No. 33 of 2 August 1945 on the regulation of the Czechoslovak nationality of persons belonging to the German or Hungarian "people" (Annex 46) since Section 1 (1) of the Decree refers to

> *"(1) Českoslovenšti státni občané národnosti nemecké nebo mad'arské, kteři podle předpisů jeizi okupačni moci nabyli státni přislušnosti německé nebo mad'arské, pozbyli dnem nabytí takové státní přislušsnosti československého statniho občanstvi.*
>
> Translation:
> "(1) Czechoslovak nationals belonging to the German or Hungarian people who acquired German or Hungarian nationality under the regulations of the foreign occupational power lost their Czechoslovak nationality as of the day of such acquisition."

Where the "Beneš Decrees" refer to persons belonging to the German (or Hungarian) "people", this qualification is unconnected with, and independent of, the nationality of these persons in the legal sense, including in the sense of the Settlement Convention.

5.10 Germany cannot rely on the "Beneš Decrees" for the purpose of interpreting or applying the Settlement Convention. The term "belonging to a people" used by the "Beneš Decrees" cannot be interpreted as relating to nationality in its ordinary meaning under international law as a legal status of individuals. Liechtenstein nationals did not become German nationals by these Decrees, whether for the purposes of the Czechoslovak nor of the German legal order, including the Settlement Convention.

### (b) Interpretation according to the context, object and purpose of the Settlement Convention

5.11 This interpretation of the term "German" used in the Settlement Convention is corroborated by the object and purpose of the relevant provisions of the Convention. The objective of these provisions is to ensure that no German court can exercise jurisdiction over a dispute concerning reparation measures for damages caused by Germany in World War II. According to the regime of reparations established as a consequence of the War, Germany as an enemy State was bound to make reparations. In the Peace Treaties after World War II reparations were exacted from the enemy countries because of "losses caused to [specific Allied and Associated States] by military operations and by the occupation by [the relevant enemy country] of the territory of those States". Similarly, in the Protocol of the Yalta Conference (Annex 11) the object of the reparations to be made by Germany was to make good "the losses caused by her to the Allied Nations in the course of the war". Under this title the Allied Powers were entitled to use property belonging to Germany as a State and German nationals to cover damages caused in World War II.

5.12 In view of the objective of such reparations, they could be taken only against property of Germany as an enemy State and German nationals as nationals of such a State, and under no circumstances against neutral States and their nationals. This condition was firmly established in the conventional and customary rules of international law on which the post-war reparations regime was based.

5.13 Hence, the whole post-war reparations regime cannot and does not affect neutral States such as Liechtenstein, or the nationals of such States. In this context, the application of Chapter Six of the Settlement Convention necessarily requires that the person affected by reparation measures be a German national. Even the property of persons who obtained German nationality only after the annexation or incorporation of the State whose nationals they were, such as, for example, persons who had Czechoslovakian nationality prior to the occupation of the latter but who acquired German nationality during the occupation period, could not be used for reparation purposes.[92] Neither Liechtenstein nor Liechtenstein citizens caused losses during World War II in the sense of the post-war reparations regime. Thus there was no basis whatever for treating them as covered by the regime.

5.14 A further indication on the correct interpretation of German property for the purposes of the post-war reparations regime is provided by Law No. 5 of the Control Council on "Vesting and Marshalling of German External Assets" of 30 October 1945 (Annex 14). Its preamble refers to the control of the Control Council of all "German assets abroad" and to the intention to "divest the said assets of their German ownership". Article III (2) defines "any person of German Nationality outside Germany" as follows:

> "For the purpose of this Article the term "any person of German Nationality outside Germany" shall apply to a person who has enjoyed full rights of German citizenship under Reich Law at any time since 1 September 1939 and who has at any time since 1 September 1939 been within any territory then under the control of the Reich Government but shall not apply to any citizen of any country annexed or claimed to have been annexed by Germany since 31 December 1937."

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[92] See I. Seidl-Hohenveldern, , *Entschädigungspflicht der Bundesrepublik für reparationsbezogenes Auslandsvermögen. Völkerrechtliche Begründung*, Verlagsgesellschaft Recht und Wirtschaft, Heidelberg, 1962, p. 127; this consequence was corroborated in a decision of the Austrian Supreme Court of 2 June 1958, SZ XXXI (1958), No. 83.

Although this definition is confined to the application of Article III, it nevertheless furnishes a certain understanding of the term "German" which is based on nationality *stricto sensu*. There is no indication that, in other legal instruments of that time and relating to matters of this kind, any different understanding was meant.

5.15 This interpretation is confirmed by Law No. 63 of the Council of the Allied High Commission on "Clarifying the Status of German External Assets and of their Property taken by Way of Reparation or Restitution" (Annex 15) which partially replaced Law No. 5. It addresses in its Article 1 (1) (a):

> "any property which, on or prior to the effective date of this Law, was located in any foreign country and German-owned and which, after September 1, 1939, has been or will be transferred or liquidated under the law of such country, or under the law of any other country by agreement with the former country
>
> (i) pursuant to measures taken in connection with the war against Germany by the government of any country which has adhered to the United Nations Declaration of January 1, 1942, or
>
> (ii) pursuant to any agreement, accord or treaty regarding the disposition of German external assets which has been or will be concluded with the participation of France, the United Kingdom and the United States of America, or
>
> (iii) pursuant to measures taken in satisfaction of claims against Germany, or
>
> (iv) pursuant to reparation measures in Japan or Tangier;"

In view of the context, German property in the sense of this law can only be understood as property of German nationals. The measures taken under the "Beneš Decrees" against Liechtenstein cannot fall within the purview of this provision since these assets cannot be considered as "German-owned" or as "German external assets".

5.16 This definition of German assets was confirmed by Article 6 A of the Paris Agreement on Reparation from Germany of 14 January 1946 (Annex 13) which provided that each Signatory Government should...

> "...hold or dispose of German enemy assets within its jurisdiction in manners designed to preclude their return to German ownership or control and shall charge against its reparation share such assets..."

This provision leaves no doubts that only those assets were referred to which belonged to Germans being enemies to the Allied and Associated Powers. The neutral status of Liechtenstein excludes the application of the expression "German enemy assets" to Liechtenstein property. The notion of "German ownership or control" must be constructed as referring only to property of German nationals.

5.17 According to the ordinary meaning, the object and purpose of the Settlement Convention (Annex 16), its context as well as other applicable rules of international law, Chapter Six of the Settlement Convention only concerned Germany and German nationals, and neither related to nationals of third States, nor obliged third States to tolerate such an extension of the scope of the measures addressed by it.

5.18 According to the standards formulated by this Court in the *Fisheries Jurisdiction* case with regard to the position of the United Kingdom, Germany "cannot be held ignorant" of such an interpretation so that it cannot claim the inopposability of this interpretation.[93] Some of the instruments defining the meaning of the term "German" were concluded by Germany, others were promulgated in the Official Gazette of the Allied High Commission or the Control Council in Germany and had therefore the force of law (e.g. Allied High Commission Law No. 63 (Annex 15) and Control Council Law No. 5 (Annex 14)).

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[93] *Fisheries Case (United Kingdom v Norway)*, Judgment of 18 December 1951, *I.C.J. Reports* 1951, p. 139.

## 2. Interference with property rights

5.19 Having regard to the absence of any right to interfere with Liechtenstein property under Chapter Six of the Settlement Convention (Annex 16), Germany infringed the property rights of Liechtenstein and Liechtenstein nationals by including the Liechtenstein property into the post-war reparations regime and refusing compensation for it. This infringement consisted, in particular, in the denial by Germany of rights to Liechtenstein property which was subject to the measures under the "Beneš Decrees".

5.20 Prior to the judgments of the German courts and the subsequent German declarations, Liechtenstein nationals enjoyed rights under German jurisdiction concerning their property which was subject to the "Beneš Decrees". Neither had Germany included this property into the German external assets which were subject to their reparations regime, nor had it regarded their reparations issue as a settled matter which would have entailed the final loss of any rights to such assets. Liechtenstein nationals could, under German jurisdiction, dispose of property they possessed in foreign countries since, in terms of the German legal order, they had not lost their title to such property, and they could enforce these transactions by resort to the German judicial system, since they could institute legal proceedings to protect transactions relating to their property. These rights are to be seen as related to the right of enjoyment of their property, which is protected by general international law. According to the German position taken before 1995, it was well established that, for Germany, the persons whose property was subject to measures under the "Beneš Decrees" did not lose their title to that property. Liechtenstein nationals who were in a similar situation still possessed their title to the property under and according to German jurisdiction.

5.21 In this regard, it is important to note that Germany had until the 1990s consistently taken the position that the post-war seizure of German external assets was unlawful, and that the question of the transfer of the rights to the property, including the question of the title, was an open question. In particular, it had consistently held that the question of expulsion and expropriation of individuals from Czechoslovakia under the "Beneš Decrees" was an unsettled question. This position was still reflected in a letter of the German Federal Chancellor Dr. Helmut Kohl of 14 January 1997 to the Reigning Prince of Liechtenstein, (Annex 40), contrary to the first German court decisions in the *Pieter-van-Laer* case. Germany did not state that Liechtenstein nationals had lost their rights relating to property subject to the "Beneš Decrees".

5.22 In its position taken in 1995 and subsequently, Germany, however, declared that the measures taken under the "Beneš Decree" against Liechtenstein property were reparation measures in the sense of the Settlement Convention. This position was exacerbated by the fact that Germany declared the issue of reparations as finally settled. This position entailed a final loss of the title to property being subject to reparation measures so far as Germany is concerned. By virtue of the application of the reparations regime to Liechtenstein property, Germany recognised the passing of title from the Liechtenstein owners to Czechoslovakia (and then the Czech Republic), so that Liechtenstein and its nationals lost any legal possibility to regain their property or to enter into legal transactions regarding this property under German jurisdiction and, even, with respect to other countries. Only the application of the reparations regime completed the loss of the rights to property of the former owners[94] once Germany regarded the reparations matter as finally settled. The effect of the loss of title has been explicitly provided for in the laws enacted by the Control Council. Thus Law

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[94] See I. Seidl-Hohenveldern, *Entschädigungspflicht der Bundesrepublik für reparationsbezogenes Auslandsvermögen. Völkerrechtliche Begründung*, Verlagsgesellschaft Recht und Wirtschaft, Heidelberg, 1962, p. 175.

No. 5 of the Control Council on "Vesting and Marshalling of German External Assets" of 30 October 1945 (Annex 14) provided in Article III:

> "All rights, titles and interests in respect of any property outside Germany which is owned or controlled by any person of German nationality outside Germany or by any branch of any business or corporation or other legal entity organised under the law of Germany or having its principle place in Germany are hereby vested in the Commission."

5.23 The laws enacted by the Control Council had legal force in Germany, so that all rights to property which fell within the scope of this law, including title to that property, passed *ex lege* to the Commission.

5.24 Article 2 of Law No. 63 of the Allied High Commission (Annex 15) confirmed this effect with regard to property defined in Article 1 (1):

> "1. All rights, title or interests of former owners to or in property to which this Law extends shall be deemed to be extinguished -
> (a) in the case of property within the purview of Article 1, paragraph 1 (a), of the date of transfer or liquidation;
> (b) in the case of property transferred or delivered by way of restitution within the purview of Article 1, paragraph 1 (b), at the date of release to the claimant country;
> (c) in the case of property transferred or delivered by way of reparation within the purview of Article 1, paragraph 1 (b), at the date of the actual delivery of such property, or where there has been no actual delivery, at the date shown in the inventory determining the valuation for the purpose of reparation."

Law No. 63 was confirmed by the second sentence of Article 2 of Chapter Six of the Settlement Convention (Annex 16):

> "The Federal Republic will not repeal or amend Law No. 63 except with the consent of the Three Powers. However, paragraph 1 of Article 6 of Law No. 63 shall be deemed to be repealed and paragraph 2 to be amended to provide that the powers therein conferred upon the Allied High Commission may be exercised by the Federal Government."

Although this legal effect was confined to property which was not situated within the jurisdiction of the Allied and Associated Powers (Article IX of Law No. 63), it reflects that the loss of title is a necessary legal consequence of reparation measures. However, as far as measures such as the "Beneš Decrees" were concerned, since these were not at that time considered or held to be reparation measures, Germany, according to its former position, did not attach to them the same legal effect. In particular it did not consider them as entailing any loss of rights, including title, to the property in question, since it considered those measures as unlawful.

5.25 The position taken by Germany in and after 1995 - applied to all Liechtenstein property seized by the measures based on the "Beneš Decrees" - has the effect of invalidating the title of Liechtenstein nationals to their property being subject to the "Beneš Decrees", so far as Germany is concerned. Liechtenstein nationals no longer obtain legal protection for any legal transaction regarding this property under German jurisdiction. The invalidation of this title and of all other rights to the Liechtenstein property amounted to an internationally wrongful infringement of Liechtenstein property rights.

5.26 This position would have effect not only with regard to German jurisdiction, but also with regard to the other States Parties to the Settlement Convention, and even to third States. In general, a treaty creates rights and duties only as between States parties. It is, however, not excluded, but - on the contrary - even very likely that courts of third States acknowledge the loss of a right which was relinquished by a treaty concluded by the State of nationality of the plaintiff.[95] That the interpretation of the Settlement Convention by Germany has indeed effect for other jurisdictions than Germany is corroborated by the decision of a Japanese Court in *Roland Sonderhoff v. Minister of Finance*:

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[95] *Ibid*, p. 74.

> "Since the Convention [i.e. Settlement Convention] is interpreted to mean that with regard to the disposition of the seized German external assets by the United States, the United Kingdom and France, neither the German Government nor an individual German national who had title to such German external assets is allowed to contest by litigation the validity of the disposition and the measures taken in connection with such disposition… Hence, Japan, according to the purpose of the Convention, may not disturb in a litigation against German nationals the disposition of German property in Japan made by the United States of America, the United Kingdom and France and the measures taken by the Japanese Government following such disposition."[96]

Since the effect of the German position relating to the interpretation of the Settlement Convention reaches even beyond the parties to the Settlement Convention as demonstrated by the case *Roland Sonderhoff v. Minister of Finance*, the position taken by Germany in 1995 and subsequently considerably reduces the possibility of Liechtenstein nationals making use of the rights relating to their property also within other jurisdictions. For these other jurisdictions such an interpretation would be the only legally correct one. If in a case before any national court the judges are bound to examine the applicability of the Settlement Convention, they would have to conform to such an interpretation. If other States follow the position taken by Germany in 1995 and subsequently, the loss suffered by the Liechtenstein nationals would be aggravated further. In this respect, it has to be noted that the Czech Republic replied to Liechtenstein during the OSCE Economic Forum on 26 May 1999:

> "The concrete property claims of the Liechtenstein family were dealt with in the past by Czech and German courts, the proceedings of which, however, resulted in verdicts rejecting the claims raised by the Liechtenstein party." (Attachment to Annex 44)

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[96] 3 *Japanese Annual of International Law* 1959.

This reply reveals that the Czech Republic identified itself with the new German position. This German position precludes the invocation of the illegal nature of the taking of Liechtenstein property under the "Beneš Decrees".

5.27 This conduct attributable to Germany and resulting from its position taken in 1995 and subsequently breaches the duty to respect the rights of foreigners. In particular, in the present case Germany has interfered with the rights of Liechtenstein nationals to their property.

5.28 Every State is bound by international law to respect the rights of foreigners. In this regard, Germany in its Memorial in the *LaGrand* case relied on § 711 of the *Restatement of the Foreign Relations Law of the United States* as a reflection of existing customary international law. This paragraph provides:

> "A state is responsible under international law for injury to a national of another state caused by an official act or omission that violates
> ...
> (b) a personal right that, under international law, a state is obligated to respect of individuals of foreign nationality; ..."[97]

5.29 The right to enjoy property as protected by customary international law has to be given a broad understanding. This understanding is well established in the literature and by numerous international decisions. Katzarov states that:

> "the content given to property by the law from remotest times down to the codes of the nineteenth and early twentieth centuries which are still in force, has a positive and a negative aspect :
> (a) it is a right of disposal which is both absolute and also unlimited in point of time ; this is the positive aspect ;
> (b) it is exclusive, which means that it confers upon its holder the power to forbid any other person to perform an act of disposal; this is the negative aspect." [98]

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[97] American Law Institute, Restatement of the Law (Third). The Foreign Relations Law of the United States, ALI Publishers, 1987, Vol. 2, p. 184, § 711.

[98] K. Katzarov, *The Theory of Nationalisation*, Nijhoff, The Hague, 1964, p. 103.

This broad meaning is confirmed also, for example, by Higgins[99] or by Mann.[100]

5.30 More generally, international tribunals have confirmed the broad meaning of the term expropriation and recognised that taking of contract rights, like taking of tangible property, or of any right which can be the object of a commercial transaction, is compensable. In the *Elettronica Sicula S.p.A. (ELSI) (United States of America v. Italy)* case, a Chamber of this Court referred to the "use, enjoyment and disposal" of property which was protected by international law.[101] Numerous other judgments and awards on international tribunals corroborated this broad meaning, such as the Iran-United States Claims Tribunal in *Amoco International Finance Corporation v. Government of the Islamic Republic of Iran,*[102] *Tippetts, Abbets, McCarthy, Stratton v. TAMS-AFFA Consulting Engineers of Iran*[103] and *Phillips Petroleum Co Iran v. The Islamic Republic of Iran et al.,*[104] or an ICSID Tribunal in *Southern Pacific Properties (Middle East) Limited v. Arab Republic of Egypt.*[105]

5.31 Declarations by international authorities and broad judicial practice clearly establish the rule of customary international law which Germany has breached by virtue of its position taken in and after 1995 and subsequently, as it interfered in the rights of Liechtenstein nationals to property which had become subject to the "Beneš Decrees". The qualification of such property as being subject of reparation measures, ensuring the invalidation of the title to such property and denying any other right to such property including the right of legal protection, amounted to an infringement of property rights of Liechtenstein nationals which entails the duty of compensation.

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[99] R. Higgins, "The Taking of Property by the State", 176 *Recueil des Cours* 1982 III, pp. *et seq.* 259, p. 271.

[100] F.A. Mann, "Outlines of a History of Expropriation", 75 *Law Quarterly Review* 1988, pp. 188 *et seq.*, p. 190.

[101] *Case Concerning Elettronica Sicula S.p.A. (ELSI)*, *I.C.J. Reports* 1989, p. 15.

[102] Partial Award No. 310-56-3, 14 July 1987, 15 Iran-US.C.T.R. 189, p. 220.

[103] Award No. 141-7-2, 29 June 1984, 6 Iran-U.S. C.T.R. 219, p. 225

[104] Partial Award No. 425-39-2, 29 June 1989, 21 Iran-US C.T.R., p. 79

[105] 32 ILM 968 (1993).

## B. Failure to compensate Liechtenstein notwithstanding its inclusion within the reparations regime

### 1. The regime of Articles 3 and 5 of Chapter Six of the Settlement Convention

5.32 Germany is bound to compensate the Liechtenstein nationals because it included their property within the reparations regime under Chapter Six of the Settlement Convention (Annex 16) without any compensation to the owners of the property. In this respect, Germany also breached international law since, even supposing that Germany were considered to be entitled to use Liechtenstein property for the purpose of reparation, it is under a duty to compensate for the loss suffered by the former owners. According to Article 5 of Chapter Six of the Settlement Convention, the Federal Republic must ensure that the former owners of property seized pursuant to the measures referred to in Articles 2 and 3 of that Chapter are compensated. Article 3 (1) refers to...

> "measures which have been, or will be, carried out with regard to German external assets or other property, seized for the purpose of reparation ...".

Article 3 (3) provides that

> "no claim or action shall be admissible against persons who shall have acquired or transferred title to property on the basis of the measures referred to in paragraph 1..."

5.33 Germany is thus bound to ensure compensation to all individuals suffering from measures referred to in Article 3 of Chapter Six of the Settlement Convention. Beneficiaries of Article 5 of Chapter Six of the Settlement Convention are *expressis verbis* "the former owners of property" seized for the purpose of reparations.

5.34 If the property of Liechtenstein nationals was seized for reparation purposes, these persons would have to be classified as "former owners" of these properties. The Principality of Liechtenstein relies on Germany's classification of Liechtenstein property seized by Czechoslovakia. Referring to these assets the Federal Government, in its reply to the application of Prince Hans-Adam II before the European Court of Human Rights (Annex 36), confirmed that the two requirements of Article 3 (1) of Chapter Six of the Settlement Convention (i.e. "German external assets" and "seized for the purpose of reparation") are fulfilled.[106] Thus, Germany qualified Liechtenstein property as German foreign assets that had been seized for reparation purposes.

### 2. Duty of Germany to compensate victims of reparation measures

5.35 In and after 1995 Germany declared the post-war reparations regime applicable to Liechtenstein property. This position necessarily entails that, although the measures of expropriation were not taken by Germany itself, Germany nevertheless accepted that Czechoslovakia, as a member of the Allied and Associated countries, was entitled to take post-war reparations against Liechtenstein property because of its classification as German property.

5.36 The obligation to make reparations for World War II was imposed on Germany as a defeated State. In this sense, Article 2 A of the Paris Agreement (Annex

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[106] Memorial of the Agent of Germany of 29 October 1999, p. 14 (Annex 36).

13) clearly spells out that the reparations after World War II were directed against the State itself:

> "The Signatory Governments agree among themselves that their respective shares of reparation, as determined by the present Agreement, shall be regarded by each of them as covering all its claims and those of its nationals against the former German Government and its Agencies, of a governmental or private nature, arising out of the war (which are not otherwise provided for), including costs of German occupation, credits acquired during occupation on clearing accounts and claims against the *Reichskreditkassen*."

The same principle, according to which the subject obligated by the reparations regime was the State itself, was already embodied in Part VIII of the Treaty of Versailles[107] and Part VIII of the Treaty of St. Germain[108] after the First World War.

5.37 This established system entails the general duty of the defeated State to compensate the individual owners for losses suffered by them as a consequence of the use of their property for reparation purposes. As a preliminary to the negotiations to the Peace Treaties after World War I, the ultimatum of the Allied Powers referred to Germany as being obliged to compensate its nationals.[109] The Peace Treaty of Versailles provided such a duty in Article 297 (i):

> "SECTION IV.
> PROPERTY, RIGHTS AND INTERESTS.
> ARTICLE 297.
>
> The question of private property, rights and interests in an enemy country shall be settled according to the principles laid down in this Section and to the provisions of the Annex hereto.

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[107] Official Gazette of the German Reich *(Reichsgesetzblatt)* 1919, p. 687.

[108] Official Legal Gazette of Austria (*Staatsgesetzblatt*) 1920, No. 303.

[109] See I. Seidl-Hohenveldern, *Entschädigungspflicht der Bundesrepublik für reparationsbezogenes Auslandsvermögen. Völkerrechtliche Begründung*, Verlagsgesellschaft Recht und Wirtschaft, Heidelberg, 1962, p. 100.

> ...
> (i) Germany undertakes to compensate her nationals in respect of the sale or retention of their property, rights or interests in Allied or Associated States."

The Treaty of Saint-Germain contained a similar provision in its Article 249.

5.38 After World War II, a duty to pay reparations was imposed on the enemy countries by the various Peace Treaties. Again, this duty was imposed directly on the enemy States, and the Peace Treaties did not stipulate the right to use private property for reparation purposes. Such provisions, each under the heading "Reparation and Restitution", were contained in the Peace Treaties with Bulgaria (Article 21),[110] Finland (Article 23),[111] Hungary (Article 23),[112] and Romania (Article 22)[113]. The Peace Treaty with Italy contained a Section "Reparation" by which similar duties were imposed on Italy (Article 74 *et seq.*). The Peace Treaty with Japan also confirmed the duty to pay reparations.[114] Since these duties were imposed directly on the enemy States and did not therefore involve property owned by individuals, these treaties did not contain a duty of compensation towards individuals in this context.

5.39 These provisions clearly establish that the objective of the reparations regimes was to impose an economic burden on the defeated States themselves and not on their nationals as individuals. The duty to make reparations could only be imposed on the States themselves, as the acts which entailed the duty of reparations were attributable specifically to each of those States. For its part, Germany identified itself with this view in 1952 when it declared that measures against individuals under the title of reparations were contrary to international law.[115]

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[110] *United Nations Treaty Series*, No. 643.

[111] *United Nations Treaty Series*, No. 746.

[112] *United Nations Treaty Series*, No. 644.

[113] *United Nations Treaty Series*, No. 645.

[114] *United Nations Treaty Series*, No. 1832.

5.40 Whenever these treaties contain clauses according to which private property may be used in order to meet obligations imposed on the States such as reparation duties, they regularly connect it with a duty of the State in question to compensate the individuals for the relevant losses. In this regard, the Peace Treaty with Italy provided in Article 74 D that claims of Allied and Associated Powers other than those mentioned in Article 74 A-C (*i.e.* USSR, Albania, Ethiopia, Greece and Yugoslavia)...

> "shall be satisfied out of the Italian assets subject to their respective jurisdictions under Article 79 of the present Treaty."[116]

In this case, Article 74 E recognized the duty to compensate the individuals who suffered losses:

> "The Italian Government undertakes to compensate all natural or juridical persons whose property is taken for reparation purposes under this Article."

5.41 These Peace Treaties consistently contain a section on "Economic Clauses" which, *inter alia*, entitles the Allied and Associated Powers to confiscate property owned by nationals of the relevant enemy country. In these treaties, the relevant enemy country is routinely obliged to compensate the nationals whose property was taken. For example, Article 25 of the Peace Treaty with Bulgaria reads:[117]

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[115] Written report of the Committee of the Federal Parliament for the Occupation Statute and Other External Affairs of 16 May 1952 (Annex 20), p. 6; Explanatory Memorandum to the Settlement Convention of 21 July 1952 (Annex 22), p. 55.

[116] *United Nations Treaty Series*, No. 747.

[117] *United Nations Treaty Series*, No. 643.

> "Article 25
>
> 1. Each of the Allied and Associated Powers shall have the right to seize, retain, liquidate or take any other action with respect to all property, rights and interests which at the coming into force of the present Treaty are within its territory and belong to Bulgaria or to Bulgarian nationals, and to apply such property or the proceeds thereof to such purposes as it may desire, within the limits of its claims and those of its nationals against Bulgaria or Bulgarian nationals, including debts, other than claims fully satisfied under other Articles of the present Treaty. All Bulgarian property, or the proceeds thereof, in excess of the amount of such claims, shall be returned.
>
> ...
>
> 3. The Bulgarian Government undertakes to compensate Bulgarian nationals whose property is taken under this Article and not returned to them."

Equivalent provisions were contained under the heading "Economic Clauses" in the Peace Treaties with Hungary (Article 29),[118] Italy (Article 79)[119] and Romania (Article 27)[120]. In all these cases, the same structure with regard to the duty to compensate individuals for the losses they had suffered from confiscations either under the title of reparation or of other claims against the relevant enemy State, which were made by the Allied and Associated Powers after World War II, was applied as to Germany. Irrespective of the question of the legal basis for the taking of property, the State Treaty for the Re-Establishment of an Independent and Democratic Austria of 15 May 1955 provided a similar duty of compensation in its Article 27 (2):[121]

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[118] *United Nations Treaty Series*, No. 747.

[119] *United Nations Treaty Series*, No. 747.

[120] *United Nations Treaty Series*, No. 645.

[121] *United Nations Treaty Series*, No. 2949.

> "Article 27
>
> **Austrian property in the territory of the Allied and Associated Powers**
>
> 2. Notwithstanding the foregoing provisions, the Federal People's Republic of Yugoslavia shall have the right to seize, retain or liquidate Austrian property, rights and interests within Yugoslav territory on the coming into force of the present Treaty. The Government of Austria undertakes to compensate Austrian nationals whose property is taken under this paragraph."

5.42 The fact that all these Peace Treaties provide for this duty of compensation reflects the existence of such a duty even in the absence of corresponding treaty provisions, i.e., a duty under customary international law

5.43 While it is true that this kind of post-war reparations regime has been imposed on the defeated States only since World War I, mainly on a treaty basis, this reiteration of the same conventional rule in subsequent conventional texts "considerably facilitates identification, since it leads to the accumulation, and concentration, of consistent State practice upon these rules over a longer period of time".[122] This conclusion is generally recognised in the doctrine as well.

5.44 A series or recurrence of treaties laying down a similar rule may not only produce a new principle of customary law,[123] but may already establish the existence of the corresponding customary rule. What is essential is that the rule be capable of general application, irrespective of whether it is contained in a multilateral or bilateral treaty, the rule may not be subject to reservations, the treaties must be widespread and representative, and the parties to them must in particular include the States whose interests are specifically affected.[124]

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[122] M. E. Villiger, *Customary International Law and Treaties*, 2nd ed., Kluwer, The Hague, 1997, p 236.

[123] Starke, "Treaties as a "Source" of International Law", 23 *British Yearbook for International Law* 1946, pp. 344 *et seq*

5.45 As regards the rule to the effect that a State obliged to provide war reparations is under the obligation to compensate those individuals who are affected by the measures taken for reparation purposes, all the criteria necessary for the existence of a customary rule of international law are met. This rule is part of a general regime whose purpose is to regulate and control the process of reparations and which, therefore, does not allow for reservations. This rule furthermore has met with widespread and representative recognition by State Parties belonging to the Western as well as the Eastern European Group, the North and Latin American as well as the Asian and the African Group.[125] More importantly, the participation in the practice of the compensation rule includes the States whose interests are specifically affected. This widespread and representative practice reveals that at the time of the conclusion of the peace treaties there existed a general conviction that this duty of compensation was a necessary corollary of the post-war reparations system in cases where the reparations were covered by property owned by private individuals.

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[124] *North Sea Continental Shelf* case, *I.C.J. Reports*, 1969, p. 42, para. 73; R. Baxter, *Treaties and Custom*, 129 *Recueil des Cours*, 1970-I, pp. 62 *et seq.* See also: Statement of Principles Applicable to the Formation of General Customary International Law, adopted by the International Law Association on its 69th Conference in 2000, Report of the Sixty-Ninth Conference, London, 2000, Principle 26, p. 760.

[125] For instance, the following States, representing all continents, are parties to the Peace Treaty with Italy (*United Nations Treaty Series*, No. 747): Albania, Australia, Belgium, Brazil, Byelorussia, Canada, Taiwan, Czechoslovakia, Ethiopia, France, Greece, India, Italy, Mexico, Netherlands, New Zealand, Pakistan, Poland, South Africa, The United Kingdom, the United States of America, Ukraine and Yugoslavia. Likewise, the signatories to the Peace Treaty with Japan (*United Nations Treaty Series* No. 1832) are representative: Argentina, Australia, Belgium, Bolivia, Brazil, Cambodia, Canada, Ceylon, Chile, Colombia, Costa Rica, Cuba, the Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France, Greece, Guatemala, Haiti, Honduras, Indonesia, Iran, Iraq, Laos, Lebanon, Liberia, Luxembourg, Mexico, the Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, the Philippines, Saudi Arabia, Syria, Turkey, South Africa, the United Kingdom, the United States, Uruguay, Venezuela, Vietnam and Japan.

5.46 The duty to pay compensation as expressed in the Peace Treaties reflects the general duty of the State which is subject to reparation measures to compensate its own nationals as the former owners who have suffered losses from such measures. As these nationals are not obliged to make reparations, but only the State itself, their losses are economic sacrifices to the benefit of their State which, in turn, requires the State to compensate the individuals. Any other solution would give the State the possibility to externalise its duty of reparations to individuals without suffering any economic losses or, at least, any losses commensurate with the required reparations. Under this latter assumption, the purpose of the post-war reparations regime would have failed. It is however a general principle of interpretation that legal rules, including those of customary law, must be interpreted so as to achieve their objective. This would also conflict with basic principles of general international law, such as the protection of private property rights or the prohibition of unjust enrichment. Furthermore, the incidence of reparations in such a case would be arbitrary, since it would fall only on those nationals who possessed external property.

5.47 If Germany was not under a duty to compensate the former owners of the assets which became subject of reparation measures, it would have been in a better position than the other enemy States. With regard to these States, the Peace Treaties impose directly on them a duty to make payments to Allied and Associated States.[126] In this context, it must be stressed that the post-war reparations regime is a legal consequence of the waging of war by a State and of the losses caused by it. This duty of compensation is a necessary legal consequence of the application of the reparations regime, which is embodied in general international law.

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[126] See above paras. 5.38 *et seq.*

5.48 Practice outside the relevant treaty or treaties is important to assess the customary character of the provision in question.[127] In the present case, such practice confirms the conclusion reached above. The Commander in Chief of the United States Forces of Occupation in Germany, for example, has given the following instruction in 1947:

> "You will attempt to obtain Control Council recognition of the principle of compensation for property taken for reparation or where it has been necessary to destroy property under the agreements for economic disarmament, such compensation to constitute a charge against the German economy as a whole."[128]

This instruction was given independently of any existing treaty obligation at that time. It is evidence of the existing conviction that the post-war reparations regime necessarily was supplemented by this duty of compensation.

5.49 In the present case, there is a pattern not of bilateral but of multilateral treaties with a practically identical structure concerning this duty. The best explanation for this identity is the existence of a conviction that a rule of customary international law required such provision in the relevant treaties. This conviction was then reflected in the relevant treaty provisions. As is shown by the instruction quoted above, this conviction was expressed even irrespective of any treaty provision. In combination with the necessity of such a provision (since otherwise the system could not achieve its object) which reflects the *opinio necessitatis* as referred to by Verdross,[129] the reflection in the treaties as well as the acts isolated from any treaty are sufficient to prove the existence of a rule of customary international law in this regard.

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[127] M. Villiger, *Customary International Law and Treaties*, 1997, 2nd ed., Kluwer, The Hague, 1997, p. 183.

[128] Directive to the Commander in Chief of the US Forces of Occupation, JCS 1779/1947, No. 16 d, quoted by I. Seidl-Hohenveldern, *Entschädigungspflicht der Bundesrepublik für reparationsbezogenes Auslandsvermögen. Völkerrechtliche Begründung*, Verlagsgesellschaft Recht und Wirtschaft, Heidelberg, 1962, p. 100.

[129] A. Verdross, *Die Quellen des universellen Völkerrechts*, Rombach, Freiburg (Breisgau), 1973, p. 115.

5.50 This conclusion on the existence of a norm of customary international law generating a duty of compensation is corroborated by the interpretation of Chapter Six of the Settlement Convention in the light of its object and purpose. The existence of this customary norm was also explicitly recognized by Germany in the process of the conclusion of the Settlement Convention.

5.51 By signing and ratifying the provision in Article 5 of the Settlement Convention, Germany accepted the confirmation of its general duty to compensate former owners. The existence of such a "general principle" was recognized by the Federal Government in its Explanatory Memorandum to the Settlement Convention of 21 July 1952 (Annex 22). Subsequent statements confirmed this position. In a statement before the German Federal Constitutional Court dated 14 August 1953 (Annex 47) the Federal Government made clear that:

> *"Die Enteignung des deutschen Auslandsvermögens erfolgt zugunsten Deutschlands zwecks Abtragung der ihm obliegenden politischen Reparationsschuld. Daher ist die Bundesrepublik verpflichtet, die liquidierten Eigentümer gemäß den Bestimmungen ihres Grundgesetzes zu entschädigen. Um diese Entschädigungspflicht zu begründen, bedarf es keiner besonderen vertraglichen oder gesetzlichen Grundlage; sie ergibt sich aus den dem Institut der Enteignung zugrundeliegenden "allgemeinen Rechtsgrundsätzen"."*
>
> "The expropriation of the German external assets take place to the benefit of Germany in order to pay off the political reparation debt incumbent on it. For this reason, the Federal Republic is obliged to indemnify the liquidated owners according to the provisions of their constitution. No particular contractual or legal base is required for substantiating this obligation towards compensation; it ensues from the 'general legal principles' on which the expropriation institution is based."

Thus, Article 5 and its duty to compensate is declaratory in nature, i.e. it reaffirms general international law, which was as such recognized by Germany.

5.52 The Termination of Article 5 by the Agreement of 27/28 September 1990 (Annex 19) did not change the general duty of Germany to compensate. According to Article 7 of the Two-Plus-Four-Treaty (Annex 18), the rights and responsibilities of the Four Powers relating to Berlin and Germany as a whole terminated, with the result that the corresponding, related quadripartite agreements, decisions and practices were terminated. As regards the Settlement Convention, an Agreement was reached between the Governments of the Federal Republic of Germany, the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America, following an Exchange of Notes on 27/28 September 1990 (Annex 19). This Agreement reads in part:

> "1. The Convention on Relations between the Three Powers and the Federal Republic of 26 May 1952 ... ("the Relations Convention") shall be suspended upon suspension of the operation of quadripartite rights and responsibilities with respect to Berlin and to Germany as a whole, and shall terminate upon the entry into force of the Treaty on the Financial Settlement with respect to Germany, signed at Moscow on 12 September 1990 ("the Two-Plus-Four-Treaty").
>
> 2. Subject to paragraph 3 below, the Convention on the Settlement of Matters arising out of the War and the Occupation of 26 May 1952 ... ("the Settlement Convention") shall be suspended and shall terminate at the same time as the Relations Convention; ...
>
> 3. The following provisions of the Settlement Convention shall, however, remain in force: ...
> Chapter Six:
> ....
> Article 3, paragraphs 1 and 3
> ..."

5.53 The Agreement did not deal with the reparation issue more explicitly - contrary to the original conception of Article 1 (1) of Chapter Six of the Settlement Convention. Thus, it was clearly not intended to deviate from the post-war reparations regime as established and recognized by Chapter Six of the Settlement Convention. The view was confirmed by the German delegation in the course of the bilateral consultations with Liechtenstein.[130]

5.54 As an exception to the general termination of the Settlement Convention, the Exchange of Notes on 27/28 September 1990 confirms Article 3 (1) and (3) of Chapter Six of the Settlement Convention, which remain in force. The non-objection and inadmissibility rule in Article 3 thus became permanent, while Article 5, Germany's obligation to compensate former owners of property seized pursuant to the measures referred to in Article 3, was terminated.

5.55 The duty to grant compensation to former owners of seized property (Article 5) is a consequence of - that is to say, is entailed by - the non-objection and inadmissibility rule of Article 3 (1) and (3) of Chapter Six of the Settlement Convention. It was meant to preserve the complementary interests of the former owners, interests that continue to exist in view of the newly confirmed non-objection and inadmissibility rule.

5.56 The Agreement of 27/28 September 1990 (Annex 19) did not depart from the concept of the post-war reparations regime under customary law to pay compensation as reflected in Article 5. The text does not contain anything to that effect. On the contrary, in the bilateral consultations of 14 June 1999 Liechtenstein was informed by the Head of the German delegation that Article 5 of Chapter Six of the Settlement Convention, reflecting the duty of compensation, had only been abrogated in 1990 because it was thought that it had become obsolete on the grounds of sufficient precautionary measures, and that there were no cases left to compensate. This view is reaffirmed, again, by the fact that the German government concluded the agreement without participation of parliament as it was approved by the Federal Constitutional Court. Had Germany considered the Agreement of 1990 a *lex specialis* replacing a general rule of customary international law, parliamentary assent would have been needed according to Article 59 of the German Basic Law.[131]

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[130] See above paras. 3.42 *et seq.*

5.57 The German Explanatory Memorandum furnished in connection with the conclusion of the Settlement Convention (Annex 22) as well as the conclusion of the Exchange of Notes of 1990 (Annex 19) prove that Germany considers itself bound by the norm of customary international law regarding the duty to compensate individuals whose property was used for post-war reparations purposes.

5.58 The inclusion of Liechtenstein property into the reparations regime did not release Germany from the duty to compensate the former Liechtenstein owners. It has to be stressed that Liechtenstein nationals remained foreigners in the legal sense for Germany, irrespective of the qualification of Liechtenstein property as "German" property. Since Liechtenstein nationals have remained foreigners in the legal sense, the duty to compensate foreigners which was explained above also applies in such a situation. Liechtenstein nationals suffered from reparation measures of other States, which addressed Germany as a State but were satisfied by the private property of Liechtenstein nationals. The cause for these reparation measures was the conduct of Germany as a State during World War II. The duty of compensation of foreigners exists even if Germany considers the measures taken against Liechtenstein property as lawful. Germany remains under the duty to compensate Liechtenstein nationals for the losses suffered by these measures.

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[131] Art. 59 Basic Law reads as follows:

(1) The Federal President represents the Federation in its international relations. He concludes treaties with foreign states on behalf of the Federation. He accredits and receives envoys.

(2) Treaties which regulate the political relations with the Federation or relate to matters of Federal legislation require the consent or participation, in the form of a Federal law, of the bodies competent in any specific case for such Federal legislation. For administrative agreements the provisions concerning the Federal administration apply mutatis mutandis."

# CHAPTER 6

# UNJUST ENRICHMENT AND GERMANY'S CHANGE OF POSITION

## A. Introduction and overview

6.1 In the two previous Chapters, Liechtenstein has established Germany's responsibility for its breaches of several rules and principles of international law. The purpose of the present Chapter is to show that, independently of these breaches, Germany is liable towards Liechtenstein under two related principles of international law. These are the principles of unjust enrichment and detrimental reliance or change of position. Both are underpinned by the fundamental principle of good faith; both are aimed at achieving an equitable result in terms of the relations of the States concerned. These causes of action do not necessarily imply (though they do not exclude) an internationally wrongful act. In one case a State is enriched without cause, i.e. unjustly, at the expense of another or of its nationals. In the other case, a State, having adopted or agreed on some policy on a matter of concern to another State, has unjustifiably changed its position, to the detriment of the latter State or its nationals.

6.2 Both principles stem from a more general concept, well known to public international law, which is the principle of good faith. This fundamental rule, which has been recalled on various occasions by the International Court,[132] requires a State to act in a way compatible with what it expects from another State in the same circumstances. Thus for example a State does certainly not expect another State to keep properties acquired without a well-founded cause and causing prejudice to this second State. Such conduct is irreconcilable with the requirement of good faith, as well as the most firmly admitted considerations of justice and equity.

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[132] See *Nuclear Tests (Australia v France)*, 20 December 1974, *I.C.J. Reports* 1974, pp. 253 *et seq.*, p. 268, para. 46; *Border and Transborder Armed Action (Nicaragua v Honduras)*, Jurisdiction and Admissibility, 20 December 1988, *I.C.J. Reports* 1988, pp. 69 *et seq.*, p. 105, para. 94; Bin Cheng, *General Principles of Law as Applied by International Courts and Tribunals*, Grotius, Cambridge, 1987, p. 105, esp. No. 1-5, and authorities referred to in No. 180. Authorities on the related doctrine of "abus de droit" in international law include: *Free Zones* case, 7 June 1932, PCIJ Ser. A/B No. 46 (1932), pp. 93 *et seq.*, p. 167; *Oscar Chinn* case, 12 December 1934, PCIJ Ser. A/B No. 63 (1934), pp. 62 *et seq.*, p. 86; *Fisheries Case (United Kingdom v. Norway)*, 18 December 1951, *I.C.J. Reports* 1951, pp. 116 *et seq.*, p. 142.

6.3 These principles apply to the facts of the present case in the following way. On the one hand, it is apparent that, by including the Liechtenstein assets in the reparations regime, Germany has enriched itself unjustly, quite apart from the issue of the lawfulness of those takings (Section B). On the other hand, by radically changing its position concerning the status of the Liechtenstein's assets since 1995, having earlier adopted a lawful policy in agreement with Liechtenstein as to those assets, Germany has caused an irremediable loss to Liechtenstein for which it owes compensation (Section C).

## B. Germany's unjust enrichment at Liechtenstein's expense

### 1. The principle of unjust enrichment (*enrichissement sans cause*) in international law

6.4 Well known in all systems of domestic law, the principle of unjust enrichment is a general principle of law, and as such a rule of general public international law. It has been applied by international tribunals in order to grant remedies in cases of unjustified wealth transactions under international law. The content of the principle can therefore be inferred from the international jurisprudence itself.

### (a) Unjust enrichment as a general principle of law

6.5 It is widely acknowledged that the general principles of law mentioned in Article 38 (1) (c) of the Statute of the International Court of Justice are an autonomous source of public international law, based on the application in the international sphere of "the general principles of municipal jurisprudence, insofar as they are applicable to relations of states".[133] In other words, a rule must be considered as a general principle of law (i) if it is applied in the main systems of municipal law and (ii) if it is "transposable" in international law, i.e., it is not inconsistent with any general principle of or applicable rule of public international law.

6.6 The principle of unjust enrichment meets both conditions: it applies in many, if not all, domestic legal systems and it is entirely compatible with the structure of international law in which it has been implemented on a number of occasions.

### (i) Domestic legal systems recognize unjust enrichment as basis for compensation or restitution

6.7 Prohibition of unjust enrichment is as ancient as law itself. Roman law already recognised the necessary repayment of patrimonial advantages reached without any legal ground. The *Corpus Iuris Civilis* and many writings of Roman lawyers and authorities stated that:

> "*iure naturae aequum est neminem cum alterius detrimento et iniuria fieri locupletiorem.*"[134]
>
> Translation:
> "For this by nature is equitable, that no one be made richer through another's loss."

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[133] Sir R. Jennings and Sir A. Watts, (eds.) *Oppenheim's International Law*, Vol. 1, 9th ed., Longman, London, 1992, p. 37; see also, G. Ripert, "Les règles du droit civil applicables aux rapports internationaux. Contribution à l'étude des principes généraux du droit visés au Statut de la Cour permanente de Justice internationale", 44 *Recueil des cours*, 1933-II, pp. 569 *et seq.*, pp. 571-587; P. Daillier and A. Pellet, *Droit international public (Nguyen Quoc Dinh)*, L.G.D.J., Paris, 6th ed., 1999, pp. 344-348.

[134] D.50.17.206 *Pomponius libro nono ex variis lectionibus*, cited in J. Hallebeek, "Developments in Mediaeval Roman Law", in E.J.H. Schrage (ed.), *Unjust Enrichment. The Comparative Legal History of the Law of Restitution*, Duncker & Humblot, Berlin, 1999, pp. 59 *et seq.*, p. 61.

Relief for unjust enrichment is thus described as a fundamental legal principle inspired by equity and even by the law of nature. In this sense, the principle has a bearing on a wide variety of issues concerning wealth transactions: contracts, property, delicts or torts, etc. But the specification of the principle in the context of the positive law of contract or delict does not mean that it has lost its generating capacity. On the contrary there has been a substantial development in the law of restitution and cognate fields in modern times, based upon such a general principle.

6.8 As a matter of fact, all or virtually all domestic legal systems incorporate this principle and have organised their legal provisions concerning wealth around it. Relief is granted for advantages reached not only for wrongful acts but also for acts (for example in cases of frustration of contract) in the absence of any wrongful act on the part of the defendant.[135] By its very nature, civil law aims at avoiding unjust enrichment of a person as a consequence of the loss endured by another and has drawn a large range of legal consequences from this broad principle. Even rules related to the calculation of compensation are influenced by considerations based on unjust enrichment. Moreover, several codifications have adopted broad provisions expressing the generic principle of unjust enrichment.[136]

6.9 Even when a specific cause of action, for example in contract or tort, is not available, most domestic legal systems have developed remedies in order to deal with unjustified acquisitions of wealth, i.e. acquisitions lacking a cause and thus unjustified in legal terms. Such cases of enrichment, lacking a legal "cause", entitle the party which has suffered damage to recover compensation.

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[135] This possibility is expressly reserved in certain cases by Article 27 (b) of the ILC's Articles on Responsibility of States for Internationally Wrongful Acts: ILC Report, 2001, UN General Assembly, Official Records, A/56/10, p. 210.

[136] Article 1382 *Code civil* (France), Article 1041 *Allgemeines Bürgerliches Gesetzbuch* (Austria), Article 62-67 *Schweizerisches Obligationenrecht* (Switzerland), Article 6:162 *Burgerlijk Wetboek* (the Netherlands), etc.

6.10 German Civil Law contains very clear provisions in this respect, based on Section 812 (1), of the German Civil Code which states:

> *"Wer durch die Leistung eines anderen oder in sonstiger Weise auf dessen Kosten etwas ohne rechtlichen Grund erlangt, ist ihm zu Herausgabe verpflichtet."*
>
> Translation:
> "A person who has gained something by the performance of another or in any other way at the other's expense without legitimate ground is bound to make restitution."

German jurisprudence initially established a sophisticated network of different unjust enrichment remedies and conditions: more recently the decisions have developed towards a more general principle not imprisoned by categories.[137] Similar developments have occurred in other countries.[138]

6.11 In France, the courts have developed a distinct remedy system in cases of unjustified enrichment. For a long time, French judges, in the absence of a textual basis for unjust enrichment claims, developed remedies in order to close the legal gap.[139] In a famous decision concerning unjust enrichment, the French *Cour de Cassation* stated that the *actio de in rem verso*:

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[137] See, e.g., Decisions of the Federal Court of Justice in civil law matters (*Entscheidungssammlung des Bundesgerichtshofes in Zivilsachen, BGHZ*) Vol. 122, pp. 46 *et seq.*, p. 52.; Vol. 89, pp. 376 et *seq.*, p. 378; Vol. 67, pp. 75 *et seq.*, p. 77.

[138] See, e.g., Articles 1021, 1042 and 1043 *Allgemeines Bürgerliches Gesetzbuch* (Austria) or Article 2041 Italian Civil Code; for further references, see F. Francioni, "Compensation for Nationalisation of Foreign Property: The Borderland between Law and Equity", 24 *International & Comparative Law Quarterly* 1975, pp. 255 *et seq.*, p. 273.

[139] See E.J.H. Schrage & B. Nicholas, "Unjust Enrichment and the Law of Restitution: A Comparison", in E.J.H. Schrage (ed.), *Unjust Enrichment. The Comparative Legal History of the Law of Restitution*, Duncker & Humblot, Berlin, 1999, pp. 9 *et seq.*, pp. 22-24; J.P. Dawson, *Unjust Enrichment. A Comparative Analysis*, Little & Brown, Boston, 1951, pp. 92 *et seq.*

> "dériv[e] du principe d'équité qui défend de s'enrichir aux dépens d'autrui et n'[a] été réglementée par aucun texte de nos lois."[140]

Indeed, the Court established clearly that *actio de in rem verso* is itself based on the more fundamental principle of equity prohibiting unjust enrichment.

6.12 In the common law, an independent ground for relief based on unjust enrichment does not seem to be as old as in the Continental law system. This is a result of the different approach to the question of general principles of law in the two fundamental different systems. For a long time, English law seems not to have recognised a general theory of unjust enrichment as such, but developed specific remedies for situations which are indeed classified as unjust enrichment circumstances by civil law systems.[141] But, far from ignoring the principle of unjust enrichment, English law only treated it differently and, in any case, it has now recognised unjust enrichment as an independent cause of action.[142] For its part, the American Law Institute in its *Restatement* declared in general terms that:

> "A person who has been unjustly enriched at the expense of another is required to make restitution to the other."[143]

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[140] Cour de cassation, Chambre des Requêtes, 15 June 1892, *Julien Patureau v. Boudier Dalloz* 1892.I.596; *Sirey*, 1893.I.281, note Labbé.

[141] *Orakpo v. Manson Investment Ltd* (1978) A.C. 95, p. 104; E. J. H. Schrage & B. Nicholas, "Unjust Enrichment and the Law of Restitution: A Comparison", in Eltjo J. H. Schrage (ed.), *Unjust Enrichment: The Comparative Legal History of the Law of Restitution*, Duncker & Humblot, Berlin, 1999, pp. 9 *et seq.*, p. 10; E. Wahl, "Die ungerechtfertigte Bereicherung der Bundesrepublik Deutschland als Rechtsgrundlage für die Ansprüche der Reparationsgeschädigten", 26 *Juristenzeitung* 1971, pp. *et seq.* 715, p. 718; F. Francioni, "Compensation for Nationalisation of Foreign Property: The Borderland between Law and Equity", 24 *International & Comparative Law Quarterly* 1975, pp. 255 *et seq.*, pp. 273-274.

[142] See E.J.H. Schrage & B. Nicholas, *ibid*, pp. 9 *et seq.*, pp. 10 and 27; F. Francioni, *ibid*, pp. 255 *et seq*, p. 274.

[143] American Law Institute, *Restatement of the Law of Restitution*, 1937, p. 12, § 1.

In common law systems there has been an enormous development of the law of restitution based on this principle.[144]

6.13 Legal systems based on Islamic law also recognise the principle of unjust enrichment.[145]

6.14 For these reasons, it can be concluded that the principle of unjust enrichment constitutes a general principle of law common to the main legal systems. Even if there are certain differences in the application of this principle in the different legal systems,[146] the underlying principle is the same. All legal systems provide for restitution or compensation in the case of someone's enrichment, causing a loss to someone else, without any legal basis.[147]

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[144] For a selection of leading and recent cases in common law jurisdictions, see generally, Vernicos Shipping Co. v. United States, 349 F. 2d, 465 (1965); 42 ILR, 1971, pp. 186 *et seq.*, pp. 187-188, *Barclays Bank Ltd v W J Simms Son & Cooke (Southern) Ltd* (1979) 3 All ER 822; *Lipkin Gorman v Karpnale Ltd* (1991) 2 AC 548; *Derby v Scottish Equitable plc* (2001) 3 All ER 818; *Banque Financière de la Cité v Parc (Battersea) Ltd* (1998) 2 WLR 475; *David Securities P/L v Commonwealth Bank of Australia* (1992) 175 CLR 353; *Pavey & Matthews Pty Ltd v Paul* (1987) 162 CLR 221; *Rural Municipality of Storthoaks v Mobil Oil Canada* (1975) 55 DLR (3d) 1; *RBC Dominion Securities Inc v Dawson et al.* (1994) 111 DLR (4th) 230; *Deglman v Guaranty Trust Co.* (1954) 3 DLR 785 (S.C.C.).

[145] See the findings of the Iran-United States Claims Tribunal in Award No. 35-219-2, 30 March 1983, *Benjamin R. Isaiah v. Bank Mellat*, 2 *Iran-United States Claims Tribunal Reports*, 1983-I, pp. 232 *et seq.*, pp. 236-7 and Award No. 207-217-2, 5 December 1985, *Shannon and Wilson, Inc. v. Atomic Energy Organization of Iran*, 9 *Iran-United States Claims Tribunal Reports*, 1985-II, pp. 397 *et seq.*, p. 402; see also: Arbitral Tribunal Mahmassani Award,, 12 April 1977, Libyan American Oil Company (*LIAMCO v. Government of the Libyan Arab Republic*), 62 ILR, pp. 140 *et seq.*, pp. 175-176.

[146] F. Francioni, "Compensation for Nationalisation of Foreign Property: The Borderland between Law and Equity", 24 *International & Comparative Law Quarterly*, 1975, pp. 255 *et seq.*, p. 274; C.H. Schreuer, "Unjustified Enrichment in International Law", 22 *American Journal of Comparative Law*, 1974, pp. 218 *et seq.*, p. 283.

[147] See also: Mexico-United States Claims Commission, Decision, July 1931, *Dickson Car Wheel Company (U.S.A.) v. United Mexican States*, *UNRIAA*, Vol. IV, pp. 669 *et seq.*, p. 676; Georges Ripert, "Les règles du droit civil applicables aux rapports internationaux. Contribution à l'étude des principes généraux du droit visés au Statut de la Cour permanente de Justice internationale", *Recueil des Cours* 1933-II, Vol. 44, pp. 569 *et seq.*, p. 631; F. Francioni, *ibid*, pp. 255 *et seq.*, pp. 273-274.

6.15 It thus appears that the principle of unjust enrichment is more than an "expression of noble sentiments inspiring the creators of the law".[148] Rather it is a foundational principle underlying restitution or compensation in numerous domestic legal systems.

### (ii) The principle is transposable to international law

6.16 There is no conceptual or practical obstacle to the transposition into public international law of this general principle. There is nothing in international law, whether in its positive rules or its general principles, that excludes or contradicts the principle of unjust enrichment. On the contrary, as explained below, the principle is received at the international level.

6.17 It is true that some authorities have denied that the principle of unjust enrichment can be transposed at the international level.[149] However, the basis for these doubts is, above all, an over-reliance (amounting to a *petitio principii*) on the difficulties of the transposition of rules having a civil law origin into public international law which regulates the relations between sovereign States, and which has not the same degree of precision or development as domestic law.

6.18 No doubt general principles of domestic law systems cannot be transposed "mechanically" into international law.[150] As Judge Sir Arnold McNair stated in a celebrated separate opinion in the *Status of South West Africa* advisory opinion of 1950:

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[148] C.H. Schreuer, "Unjustified Enrichment in International Law", 22 *American Journal of Comparative Law*, 1974, pp. 218 *et seq.*, p. 281.

[149] See G. Ripert,"Les règles du droit civil applicables aux rapports internationaux. Contribution à l'étude des principes généraux du droit visés au Statut de la Cour permanente de Justice internationale", *Recueil des Cours*, 1933-II, Vol. 44, pp. 569 *et seq.*, p. 631; H. Pazarci, "La responsabilité internationale des États à l'ocassion des contrats conclus entre États et personnes privées étrangères", 79 *Revue générale de Droit international public*, 1975, pp. 354 *et seq.*, pp. 415-416.

[150] E. Jiménez de Aréchaga, "International Law in the Past Third of a Century", *Recueil des Cours*, 1978-I, Vol. 159, p. 1 *et seq.*, p. 300; see also e.g.: F. Francioni, "Compensation for Nationalisation of Foreign Property: The Borderland between Law and Equity", 24 *International & Comparative Law Quarterly*, 1975, pp. 255 *et seq.*, p. 275.

> "International law has recruited and continues to recruit many of its rules and institutions from private systems of law. Article 38 (1) (*c*) of the Statute of the Court bears witness that this process is still active and it will be noted that this article authorizes the Court to 'apply … (*c*) the general principles of law recognized by civilized nations'. The way in which international law borrows from this source is not by means of importing private law institutions 'lock, stock and barrel', ready-made and fully equipped with a set of rules… In my opinion, the true view of the duty of international tribunals in this matter is to regard any features or terminology which are reminiscent of the rules and institutions of private law as an indication of policy and principles rather than as directly importing these rules and institutions."[151]

6.19 Beyond the differences in the various municipal legal systems, the general idea lying under the principle is certainly not unfamiliar in international law. Furet asserts:

> "C'est un principe d'équité très général que nul ne peut s'enrichir injustement aux dépens d'autrui. Il a été dégagé par le droit privé, mais il y a toutes raisons de penser qu'il demeure valable en droit international public."[152]

Even Ripert, who presumed that unjust enrichment is not easily transposable into public international law, nevertheless concluded:

> "Il ne faut pourtant pas renoncer délibérément à ce principe dans le droit des gens… Il n'y a aucune raison pour ne pas dire qu'un Etat ne saurait s'enrichir injustement ou sans cause aux dépens d'un au-

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[151] *International Status of South-West Africa*, Advisory Opinion, 11 July 1950, *I.C.J. Reports* 1950, pp. 128 *et seq.*, p. 148.

[152] M.-F. Furet, "L'application des concepts du droit privé en droit international public", 68 *Revue général de Droit international public* 1964, pp. 887 *et seq.*, p. 901.

> tre. L'application de cette règle pourra peut-être un jour donner le moyen de réparer certaines injustices."[153]

6.20 There is no incompatibility between the unjust enrichment principle and public international law. As far as wealth transactions are concerned - and this is the case more and more often between States and from a public international law perspective - equitable considerations surrounding the remedies for unjust enrichment could be applied even between States, or between States and non-State entities. A State may not enrich itself without any legal basis, causing thereby a loss to another State or person.

6.21 Thus the concept of unjust enrichment is received in public international law; it inspires many of its rules and nowadays constitutes a valid international legal principle.

### (b) The principle of unjust enrichment has been incorporated into international law

6.22 The principle of unjust enrichment has been incorporated in public international law as both, a fundamental principle governing and inspiring rules of law and a separate cause of action.

#### (i) Unjust enrichment as a basic principle of international law

6.23 The principle of unjust enrichment inspires various legal regimes in public international law. Thus, in the law of State succession, it is recognised that a successor State is under an obligation to reimburse the debts of its predecessor as far as it has derived benefit from them.[154] And even if, practically, the decisive criterion is laid on the financial capacities of the State (in relation, of course, to what it received from its predecessor), unjust enrichment has to be seen as the real justification of these rules.[155]

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[153] G. Ripert, "Les règles du droit civil applicables aux rapports internationaux. Contribution à l'étude des principes généraux du droit visés au Statut de la Cour permanente de Justice internationale", *Recueil des Cours*, 1933-II, Vol. 44, pp. 569 *et seq.*, p. 632.

6.24 The principle has also shaped the international law of compensation for expropriation of property.[156] The legal basis of the obligation to compensate in case of lawful takings of property is founded in the principle of unjust enrichment. Indeed, in the absence of any internationally wrongful act, the international responsibility of the expropriating State is not entailed and it cannot be deemed to have a duty to compensate the foreign investor for its losses on the basis of the law of responsibility. Therefore, the *ratio legis* for the duty to compensate is the principle of unjust enrichment and this is confirmed by State practice. As D.P. O'Connell put it: "The juridical justification for the obligation to pay compensation is to be found in the concept of unjust enrichment, which lies at the basis of the doctrine of acquired rights, and which is formalised by reference to the international standard of civilised society."[157]

6.25 Finally, the concept of unjust enrichment also finds application concerning the evaluation of compensation, in cases of lawful expropriations as well as within the framework of State responsibility for internationally wrongful acts. The amount of the compensation has to be determined in such a way that it does not

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[54] See articles 37, 40 and 41 of the 1983 Vienna Convention on Succession of States in respect of State Property, Archives and Debts, 7 April 1983; See also: M.-F. Furet, "L'application des concepts du droit privé en droit international public", 69 *Revue générale de Droit international public* 1964, pp. 887 *et seq.*, p. 901.

[55] See further D.P. O'Connell, "Unjust Enrichment", 5 *American Journal of Comparative Law* 1956, p. 2.

[56] See A.D. McNair, "The Seizure of Property and Enterprises in Indonesia", 6 *Netherlands International Law Review* 1959, pp. 218 *et seq.*, pp. 239-242; H. Dagan, *Unjust Enrichment. A Study of Private Law and Public Values*, CUP, Cambridge, 1997, ch. 6 and references.

[57] D.P. O'Connell, *International Law*, Vol. II, Stevens & Sons, London, 1970, pp. 780-781; see also: E. Jiménez de Aréchaga, "International Law in the Past Third of a Century", *Recueil des cours*, 1978-I, Vol. 159, p. 1, pp. 299-300.

amount to an unjustified enrichment neither of the injured party nor of the wrongdoer. The exact balance of the enrichment and the loss is to be established and to be corrected. Every surplus or shortfall in the compensation would result in an unjustified enrichment of one of the parties.[158] It appears therefore that unjust enrichment is the underlying principle explaining the full (and not more than full) compensation principle.

### (ii) Unjust enrichment as a cause of action

6.26 As clearly shown by international precedents, restitutionary remedies quite often are based on the concept of unjust enrichment.

6.27 The Arbitral Tribunal constituted between the United States and Peru in order to decide the *Landreau Claim* concerning the payment of compensation for performance of a later denounced contract stated:

> "The Government got the information on the footing of the contract of 1865 and having repudiated that contract by the decree of 12th December, 1868, they are bound to pay on a *quantum meruit* for the discoveries which they appropriated for their own benefit."[159]

6.28 Similarly, in the *William A. Parker Case*, the Mexico-United States Claims Commission based its decision on the principle of unjust enrichment and awarded compensation in the absence of any contract or tortious act, thus recognising unjust enrichment as a cause of action.[160]

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[158] See, e.g., Arbitral Tribunal (Max Huber), Award, 1 May 1925, *Spanish Zone of Maroco Claims*, *UNRIAA*, Vol. II, pp. 615 *et seq.*, pp. 733-735; I. Seidl-Hohenveldern, "L'évaluation des dommages dans les arbitrages transnationaux", 33 *Annuaire français de droit international*, 1987 pp. 7 *et seq.*, p. 21; F. Francioni, "Compensation for Nationalisation of Foreign Property: The Borderland between Law and Equity", 24 *International & Comparative Law Quarterly* 1975, pp. 255 *et seq.*, pp. 277-281; C.H. Schreuer, "Unjustified Enrichment in International Law", 22 *American Journal of Comparative Law* 1974, pp. 281 *et seq.*, pp. 286-287.

[159] Award, 26 October 1922, *UNRIAA*, Vol. I, pp. 347 *et seq.*, p. 364.

[160] Mexico-United States Claims Commission, Interlocutory decision, 31 March 1926, *William A. Parker (U.S.A.) v. United Mexican States*, *UNRIAA*, Vol. IV, pp. 35 *et seq.*, p. 40.

6.29 Even more directly, the Tribunal in the *Lena Goldfields Arbitration* found the ground of recovery in the unjust enrichment principle:

> "On ordinary legal principle this constitutes a right of action for damages, but the Court prefers to base its award on the principle of 'unjust enrichment', although in its opinion the money result is the same."[161]

6.30 Similarly, in various awards, other arbitral bodies granted indemnity to applicants to the extent of actual profit gained by the respondent.[162]

6.31 Under Article V of the Declaration of the Government of the Democratic and Popular Republic of Algeria concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran (Claims Settlement Declaration) of 19 January 1981,[163] the Tribunal is to apply "principles of commercial and international law". The Iran-United States Claims Tribunal has recognised the principle of unjust enrichment as a restitutionary remedy. For example Chamber 1 of the Tribunal asserted:

> "The concept of unjust enrichment had its origins in Roman Law, where it emerged as an equitable device 'to cover those cases in which a general action for damages was not available'. It is codified or judicially recognised in the great majority of the municipal legal systems of the world, and is widely accepted as having been as-

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[161] Arbitral Tribunal Award, 3 September 1930, *Lena Goldfields, Ltd. v. USSR*, full text of award reproduced in A. Nussbaum, "The Arbitration between the Lena Goldfields Ltd and the Soviet Government", 36 *Cornell Law Quarterly* 1950, pp. 31 *et seq.*, p. 51.

[162] Arbitral Award, *Thomas C. Baker's Claim* (United States v. Mexico), in J. B. Moore, 4 *History and Digest of Arbitrations to which the United States have been a Party* 1898, p. 3668; Hungaro-Belgian Mixed Arbitral Tribunal, 29 October 1925, *Sucrerie de Roustchouk v. Etat hongrois*, 5 *Recueil des decisions des T.A.M.*, p. 772; P.C.A., Arbitral Award, 27 July 1956, *Lighthouses Case (merits)*, *UNRIAA*, Vol. XII, pp. 155 *et seq.*, p. 253.

[163] 1 *Iran-United States Claims Tribunal Reports*, 1981-82, pp. 9 *et seq.*, pp. 11-12.

> similated into the catalogue of general principles of law available to be applied by international tribunals."[164]

6.32 It is thus apparent, that unjust enrichment is a generally applied principle of law, transplanted from municipal systems of law in international law, now widely applied in international law, which constitutes *per se* a distinct cause of action.

### (c) The content of the principle of unjust enrichment

6.33 Concerning the content of the principle, the arbitral practice has clarified the conditions which have to be met in order to successfully invoke unjust enrichment as a restitutionary remedy. The Iran-United States Claims Tribunal summed up these conditions in the following way:

> "There must have been an enrichment of one party to the detriment of the other, and both must arise as a consequence of the same act or event. There must be no justification for the enrichment, and no contractual or other remedy available to the injured party whereby he might seek compensation from the party enriched."[165]

6.34 The four criteria are thus (a) an enrichment of one party, (b) an impoverishment of the other party, (c) a causal link between the impoverishment and the enrichment and, finally, (d) the absence of a cause, that is of any contractual or legal basis of the transaction.

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[164] Iran-United States Claims Tribunal, Award No. 135-33-1, 22 June 1984, *Sea-Land Service, Inc. v. The Islamic Republic of Iran, et al.*, 6 *Iran-United States Claims Tribunal Reports*, 1984-II, pp. 149 *et seq.*, p. 168; see also Award No. 207-217-2, 5 December 1985, *Shannon and Wilson, Inc. v. Atomic Energy Organization of Iran*, 9 *Iran-United States Claims Tribunal Reports*, 1985-II, pp. 397 *et seq.*, p. 402; Award No. 259-36-1, 13 October 1986, *Flexi-Van Leasing, Inc. v. The Government of the Islamic Republic of Iran*, 12 *Iran-United States Claims Tribunal Reports*, 1986-III, pp. 335 *et seq.*, pp. 352-353; Award No. 295-834-2, 27 March 1987, *Schlegel Corporation (on behalf of Schlegel Lining Technology GmbH) v. National Iranian Copper Industries Company*, 14 *Iran-United States Claims Tribunal Reports*, 1987-I, p. 176 *et seq.*, p. 180.

[165] Iran-United States Claims Tribunal, Award No. 135-33-1, 22 June 1984, *Sea-Land Service, Inc. v. Government of the Islamic Republic of Iran et al.*, 6 *Iran-United States Claims Tribunal Reports*, 1984-II, pp. 149 *et seq.*, p. 169; see also: Award No. 207-217-2, 5 December 1985, *Shannon and Wilson, Inc. v. Atomic Energy Organization of Iran*, 9 *Iran United States Claims Tribunal Reports*, 1985-II, pp. 397 *et seq.*, p. 402 or Mexico-United States Claims Commission, Decision, July 1931, *Dickson Car Wheel Company (U.S.A.) v. United Mexican States*, *UNRIAA*, Vol. IV, pp. 669 *et seq.*, p. 676.

### 2. Unjust enrichment of Germany through the inclusion of the Liechtenstein property within the reparations regime

6.35 It results from the above exposed principles that unjust enrichment can be envisaged both as a distinct cause of action and as a means to evaluate the damage sustained by Liechtenstein as a consequence of Germany's behaviour. In both cases, the same conditions must be met:

(a) Germany must have enriched itself through its acts or omissions;
(b) to the detriment of Liechtenstein;
(c) a causal link must exist between Germany's enrichment and Liechtenstein's impoverishment,
(d) without a "cause" in the legal sense, i.e. without justification.

All four conditions are met in the present case, as will now be demonstrated.

#### (a) Germany's Enrichment

6.36 The present case relates to a debtor's use of other people's property in order to clear himself from his debt (or part of it) towards his creditor. Germany is a debtor for war reparations; by including Liechtenstein's assets in the reparations regime, it has used them to pay part of its debt due to Czechoslovakia, thus clearly enriching itself at the detriment of Liechtenstein.

#### (i) The debt and the debtor

6.37 There can be no doubt as to Germany's indebtedness towards Czechoslovakia as a result of the post-war reparations regime.

6.38 As explained in Chapter 2 above, after the war, Germany was subject to a strict obligation of reparations "for the losses caused by her to the Allied nations in the course of the war" (Yalta Protocol) (Annex 11). This is a continuing obligation.

6.39 According to Chapter IV (3) of the Potsdam Protocol of 2 August 1945 (Annex 12),

> "[t]he reparation claims of the United States, the United Kingdom and other countries entitled to reparations shall be met from the Western zones and from appropriate German external assets".

The Paris Agreement of 14 January 1946 (Annex 13) lists Czechoslovakia among these "other countries entitled to reparations" for a share amounting to 3 % of Category A reparations and 4.3 % of Category B.[166] Provision for payment of reparations were detailed in various legal instruments including Law No. 63 of the Council of the Allied High Commission of 31 August 1951 (Annex 15) and the Settlement Convention of 26 May 1952 (Annex 16). Although the Convention has been partly terminated following the Exchange of Notes of 27/28 September 1990 (Annex 19), the obligation to make reparations has never been questioned.

6.40 It follows from the above that Germany was under an obligation to make reparations to Czechoslovakia for the losses sustained by the latter in the course of the war.

### (ii) The enrichment

6.41 As shown in Chapter 3 of this Memorial, until the mid 1990s, Germany had consistently regarded the "Beneš Decrees" as contrary to international law. Under this situation, there was no question of Germany's enrichment: the Respondent State rightly considered that the Liechtenstein nationals' assets were not part of the reparations regime and could not, therefore, be deducted from the debt it owed to Czechoslovakia on this account.

6.42 The picture changed completely when Germany contended, following the Pieter-van-Laer case, that the Liechtenstein nationals' assets confiscated by Czechoslovakia had been rightly treated as German assets, as defined by the reparations regime. In other words, Germany now accepts that these properties were "seized for the purpose of reparation or restitution, or as a result of the state of war", within the meaning of Article 3 (1) of Chapter Six of the Settlement Convention (Annex 16).

6.43 Henceforth, Germany includes the confiscated assets among the global amount owed by it to Czechoslovakia and this amount comes as a deduction from its debt. It thus clearly constitutes an enrichment for Germany. As acknowledged by popular wisdom, "*Qui paye ses dettes s'enrichi*". This is not only a traditional maxim. It is a legal principle firmly anchored in international law. In the *Raymond* case, the United States-Venezuela Mixed Arbitral Commission already recognized this principle.[167] Equally, in the *Aminoil* case,[168] the Arbitral Tribunal effectively took into account the liabilities of Aminoil, stating:

> "Decree Law No. 124, and the measures taken under it, determined the transfer of the Company's assets and operations on the basis of the clause in the Concession providing for a normal completion of its term… This way of dealing with the matter was not opposed by Aminoil. The transfer of the assets gave rise to a credit in its favour, whereas that of liabilities created a debt. The sums due at the

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[166] See above paras. 2.10-2.12.

[167] Mixed Claims Commission United-States Venezuela constituted under the Protocol of 17 February 1903, Award, 1903, *Raymond et al.* (United States of America v. Venezuela), *UNRIAA*, Vol. IX, pp. 310 *et seq.*, p. 314: "As the assignment … was received in discharge of a money debt due from De Sonneville, it is in judgment of law to be considered as the same thing as if De Sonneville had actually paid money to the amount agreed upon…".

[168] Arbitral Tribunal, Award, 24 March 1982, *The Government of the State of Kuwait v. The American Independent Oil Company (AMINOIL)*, 21 ILM 1982, p. 976.

> date of 19 September, 1977, and paid by the Government, have to be refunded by the Company".[169]

The debts of Aminoil were, consequently, deducted from the compensation owed by Kuwait for the expropriation of the concession rights.[170] The Iran-United States Claims Tribunal proceeded in a similar sense concerning a counterclaim "which arises out of the same contract, transaction or occurrence that constitutes the subject matter of [the original] national's claim".[171]

6.44 By acknowledging that the Liechtenstein assets are part of its debt Germany has, therefore, enriched itself since its debt has been lessened in the same proportions. This fact was clearly recognised by the German Government in its comment of 14 August 1953 in the proceedings on the second action for a declaratory judgment of the parliamentary group of the SPD before the Federal Constitutional Court (Annex 47):

> *"Die Enteignung des deutschen Auslandsvermögens erfolgt zugunsten Deutschlands zwecks Abtragung der ihm obliegenden politischen Reparationsschuld. Daher ist die Bundesrepublik verpflichtet, die liquidierten Eigentümer gemäß den Bestimmungen ihres Grundgesetzes zu entschädigen. Um diese Entschädigungspflicht zu begründen, bedarf es keiner besonderen vertraglichen oder gesetzlichen Grundlage; sie ergibt sich aus den dem Institut der Enteignung zugrundeliegenden "allgemeinen Rechtsgrundsätzen"."*

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[169] *Ibid.*, p. 1027.

[170] *Ibid.*, p. 1041 *et seq.*

[171] Article II, paragraph 1, of the Declaration of the Government of the Democratic and Popular Republic of Algeria concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran (Claims Settlement Declaration) of 19 January 1981, 1 *Iran-United States Claims Tribunal Reports* 9, 1981, 1982. See also G. H. Aldrich, *The Jurisprudence of the Iran-United States Claims Tribunal*, Clarendon, Oxford, 1996, p. 110 *et seq.*; P. Daillier (ed.), "Tribunal irano-américain de réclamations", 46 *Annuaire français de droit international* 2000, pp. 326 *et seq.*, pp. 339-342. Even outside any counterclaim consideration, the very same Tribunal accepted competing debts to be compensated between themselves (see, e.g., Iran-United States Claims Tribunal, Award No. 419-128/129-2, 30 March 1989, *Sedco, Inc. for itself and on behalf of Sedco International, S.A. v. Iran Marine Industrial Company, et al.*, 21 *Iran-United States Claims Tribunal Reports* 31, 1989-I, pp. 53 *et seq.* - deducing from the compensation accorded to the claimant a debt owed to the respondent).

> Translation:
> "The expropriation of German external assets takes place to the benefit of Germany in order to pay off the political reparations debt incumbent on it. For this reason, the Federal Republic of Germany is obliged to indemnify the liquidated owners according to the provisions of their constitution. No particular contractual or legal base is required for substantiating this obligation towards compensation; it ensues from the 'general legal principles' on which the expropriation institution is based."

### (b) Liechtenstein's correlative impoverishment

6.45 The second aspect of Germany's unjust enrichment in the present case is self-evident. Germany has been enriched at least in the same measure as the Liechtenstein nationals have been impoverished. They have lost the use of the assets, the income deriving from them and any possibilities of liquidating them. In this respect, it appears that the loss sustained is even higher than Germany's enrichment, since the owners of the confiscated assets have been deprived not only of their properties (*damnum emergens*), but also, in many cases (agricultural lands, factories) of their expected profits (*lucrum cessans*).

### (c) The link between Germany's enrichment and Liechtenstein's impoverishment

6.46 The behaviour of Germany is entirely independent from the lawfulness or unlawfulness of Czechoslovakia's acts. As explained above,[172] the principle of unjust enrichment applies independently of any unlawfulness of the act generating the enrichment: whether the post-war decisions of Czechoslovakia were lawful or not, the fact is that they were at the origin of the deprivation of property endured by Liechtenstein and its nationals, and that, by endorsing them, Germany has enriched itself. Thus, Germany's enrichment only generated from the Germany's decision, after 1995, to include the Liechtenstein property in the reparations regime. Without the decision taken *by Germany* the impoverishment of Liechtenstein and its nationals would not have resulted in an enrichment for Germany and the whole matter would have remained *res inter alios acta*. And this holds true whether Czechoslovakia's acts were lawful or not.

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[172] See above para. 6.8.

6.47 In other words, the direct causation of Germany's enrichment lies in its own behaviour and the confiscation of the assets in 1945 is a mere fact in this respect, the qualification of which as legal or not does not matter.

6.48 Had Article 5 of Chapter Six of the Settlement Convention (Annex 16) been applied, there would have been no room for a claim under the principle of unjust enrichment: Liechtenstein and its nationals would have been compensated for their losses. They could have invoked no impoverishment - while the whole operation would have been financially neutral for Germany: it would have paid part of its debt to Czechoslovakia through the Liechtenstein property which would have, then, been compensated by it.[173]

6.49 The problem precisely is that Germany has included the Liechtenstein property into the reparations regime while at the same time denying its obligation to compensate Liechtenstein and its nationals for the losses sustained under the pretext that Article 5 of the Settlement Convention is no longer applicable since 1990. Therefore Germany profits from the late inclusion of the assets in the reparations regime without accepting its liability to afford compensation to the victims. Germany is enriched and Liechtenstein and its nationals are irremediably impoverished by the same pattern of acts by Germany.

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[173] This does not mean that such an operation would have been lawful in other respects. As shown in previous Chapters, it would have infringed the rights of Liechtenstein, in particular the right to respect for its neutrality and sovereignty.

### (d) The absence of legal cause or justification

6.50 Liechtenstein has shown in the previous Chapters of this Memorial that Germany's behaviour was unlawful under general international law. This has no special relevance regarding its claim based on the principle of unjust enrichment: whether lawful or unlawful, Germany's behaviour is the direct source of both its own enrichment and Liechtenstein's impoverishment.

6.51 And this behaviour is devoid of any legal basis in international law. In particular:

(a) Germany was, at the very least, not legally bound to include Liechtenstein's assets within the reparations regime;
(b) nor was it legally bound to refuse compensation for the losses resulting from its doing so;
(c) nor was Germany in a situation such as *force majeure*, distress or a state of necessity - which might apply even in absence of responsibility - of such a nature that it had to adopt the behaviour it took;
(d) nor has Liechtenstein consented to or acquiesced in this behaviour.

6.52 Therefore, independently of their unlawful character, the acts of Germany, by which it has enriched itself, have no legal cause which could justify its enrichment. It clearly appears as an "*enrichissement sans cause*" the consequences of which must be compensated by Germany.

## C. Germany's unjustified change of position to Liechtenstein's detriment

### 1. Equitable claims based on a detrimental and unjustified change of position: in principle

6.53 Germany's unjustified change of position, in the years after 1990, caused detriment to Liechtenstein which should be compensated for under international law. This would be true, even if it were considered that Germany did not itself gain any advantage, tangible material or other, from the change of position.

6.54 It is submitted that under general international law, when a State acts on a matter concerning another State to the detriment of the latter, and does so in a way which is contrary to a prior understanding or position taken by the former State and shared with the latter, the State taking the action is responsible to compensate for the detriment caused, unless its change of position is otherwise justified.

6.55 As a matter of principle, this conclusion may be supported by reference to considerations of equity and good faith in international relations. The continued generative force of such considerations is affirmed, for example, by decisions of this Court,[174] as well as by the following paragraphs of the Friendly Relations Declaration, which elaborate on the principle that States must fulfil "in good faith the obligations assumed by them in accordance with the present Charter":[175]

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[174] See, e.g., *Nuclear Tests (Australia v France)*, 20 December 1974, *I.C.J. Reports* 1974, pp. 253 *et seq.*, p. 268, para 46: "One of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith. Trust and confidence are inherent in international co-operation, in particular in an age when this co-operation in many fields is becoming increasingly essential.".

[175] Charter of the United Nations, Article 2 (2).

> "Every State has the duty to fulfill in good faith its obligations under the *generally recognized principles and rules* of international law.
>
> Every State has the duty to fulfill in good faith its obligations under international agreements valid under the *generally recognized principles and rules* of international law."[176]

6.56 As a matter of authority, this principle underlies and explains a range of decisions of arbitral tribunals given in cases which did not involve a specific obligation of conduct imposed by a treaty or other rule of international law. A number of illustrations may be given.

6.57 In his treatment of the range of decisions and state practice grouped under and supportive of the general principle of good faith, Bin Cheng states that:

> "The protection of good faith extends equally to the confidence and reliance that can reasonably be placed not only in agreements but also in communications or other conclusive acts from another State. If State A has knowingly led State B to believe that it will pursue a certain policy, and State B acts upon this belief, as soon as State A decides to change its policy - although it is at perfect liberty to do so - it is under a duty to inform State B of this proposed change. Failure to do so, when it knows or should have known that State B would continue to act upon this belief, gives rise to a duty to indemnify State B for any damage it may incur. What the principle of

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[176] General Assembly Resolution 2625 (XXV), 24 October 1970, para. 1, Principle 7 (emphasis added). For further material on the general principle of good faith in international law, see Sir R. Jennings and Sir A. Watts, (eds.) *Oppenheim's International Law*, Vol. 1, 9th ed., Longman, London, 1992, p. 38; M. Shaw, *International Law*, 4th ed., Cambrige University Press, Cambridge, 1997, pp. 81, 82; E. Zoller, *La bonne foi en droit international public*, A. Pedone, Paris, 1977; H. Thirlway, "The Law and Procedure of the International Court of Justice", 60 *British Yearbook of International Law* 1989, pp. 1 *et seq.*, pp. 7 *et seq.*; and G. Fitzmaurice, *The Law and Procedure of the International Court of Justice*, Grotius, Cambridge, 1986, Vol. I, p. 183 and Vol. II, p. 609. For references to equitable principles as part of international law, see Individual Opinion by M.O. Hudson, *Diversion of Water from the Meuse*, 28 June 1937, PCIJ Series A/B No. 70, p. 73, p. 77; *North Sea Continental Shelf* cases (Germany/Denmark, Germany/Netherlands), 20 February 1969, *I.C.J. Reports*, pp. 3 *et seq.*, p. 53; M. Shaw, *International Law*, 4th ed., Cambrige University Press, Cambridge, 1997, pp. 82-86, especially No. 121; A.V. Lowe, "The Role of Equity in International Law", 12 *Australian Yearbook of International Law* 1992, p. 54.

> good faith protects is the confidence that State B may reasonably place in State A."[177]

6.58 The author gives as an example the *Blockade of Portendic Case. Claims of British Subjects against France* (1843). This controversy was resolved by an award of the King of Prussia given at Berlin on 30 November 1843 in favour of the claimants.[178] The French Minister of War and Marine had informed the British Ambassador, some ten months prior to the closure of the port, that it would not be closed, and British merchants relied on that assurance to their detriment. The British argument was to the following effect:

> "The Minister of Marine may not be able to engage his Government as to what it will do, but he may be perfectly able to say what the Government, in the department over which he presides, is not going to do. There is not (precisely speaking) an engagement in this case, but there is a confidential communication, which communication, in all good faith, is to be believed, until otherwise explained or contradicted… [W]here a Minister of the French Government has made an official communication, relative to his own department, the Government of Great Britain is justified by all the rights and constant usage subsisting in the intercourse between civilised nations, to give trust and confidence to such declaration; and that if the French Government should think fit, afterwards, to act contrary to the assurances of its own official organ, that then, in common justice, the British Government have a fair right to expect the earliest communication of such intention."

6.59 The King of Prussia as Arbitrator in substance agreed. He held:

> "…[A]yant… à nous prononcer, comme Arbitre, sur la question de savoir, si par suite des mesures et des circonstances qui ont précédé, accompagné, ou suivi l'établissement et la notification du blocus de la côte de Portendic en 1834 et 1835, un préjudice réel a été induement apporté à tels ou tels sujets de Sa Majesté Britannique, exerçant sur la dite côte un trafic régulier et légitime, et si la France

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[177] Bin Cheng, *General Principles of Law as Applied by International Courts and Tribunals*, Grotius, Cambridge, 1987, p. 137.

[178] 34 *British and Foreign State Papers* 1377. The facts appear from the pleadings and other documents published in the same series, Vol. 23, p. 543; Vol. 33 p. 1064.

> est équitablement tenue de payer à telle ou telle classe des dits réclamants des indemnités à raison de ce préjudice;
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> ...
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> Nous sommes d'avis,
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> ...
>
> Que la France devra indemniser les réclamants des dommages et préjudices auxquels ils n'auraient pas été exposés si le dit Gouvernement, en envoyant au Gouverneur du Sénégal l'ordre d'établir le blocus, avait simultanément notifié cette mesure au Gouvernement Anglais...".[179]

The equitable character of this finding and its basis in a general principle of good faith appear both from the award and the pleadings of the successful claimant. It should be stressed that in that case the Arbitrator proceeded on the basis that France had the right to close the port by way of the blockade, so there was no question of any breach of a rule of international law in doing so. Nonetheless France was responsible to nationals of a third State who had relied on an assurance given by a French official to that State as to its own future conduct. This is very similar to estoppel in the general sense.

6.60 A second example is provided by the decision of the King of Sweden and Norway in the *Samoan Claims* arbitration (1902). The claims concerned certain German and other nationals injured by military action taken unilaterally by Britain and the United States, contrary to the prior understanding of the three governments that only collective action would be taken. The Arbitrator upheld the claim, saying, *inter alia*:

> "Whereas, furthermore, by proclamation issued on the 4th of January, 1899, the consular representatives of the treaty powers in Samoa, owing to the then disturbed state of affairs and to the urgent necessity to establish a strong provisional government, recognized the Mataafa party... to be the provisional government of Samoa pending instructions from the three treaty powers, and thus those powers were bound upon principles of international good faith to

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[179] 34 *British and Foreign State Papers*, p. 1378.

> maintain the situation thereby created until by common accord they had otherwise decided; and
>
> Whereas, that being so, the military action in question undertaken by the British and American military authorities before the arrival of the instructions mentioned in the proclamation, and tending to overthrow the provisional government thereby established, was contrary to the aforesaid obligation and can not be justified on the plea neither of the invalidity *ab initio* of the said provisional government, nor of its establishment under a species of *force majeure*..."[180]

6.61 In both these cases the action taken was not unlawful *per se*; and the situation in which reliance occurred was temporary in character. However situations may occur where the neighbouring State has irrevocably relied on the situation, i.e. where no adjustment is possible which would enable it to avoid detriment arising. In such a case, which is closely akin to that of estoppel, the State concerned may not be permitted to change the common policy, even in the absence of a treaty commitment.

6.62 Moreover the equitable character of such a requirement and its close relationship to the underlying principle of good faith is reinforced when the conduct in question contradicts the evident and general legal position of the claimant State. In such a case there is independent legal support for the position taken by that State, with which the respondent State has agreed and to which it has conformed its own position. When this occurs the respondent State should not be allowed to change its position to the detriment of the claimant State or its nationals, or at least should be required to indemnify the latter as a condition of doing so.

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[180] *Claims on Account of Military Operations conducted in Samoa in 1899*, Preliminary Decision of 14 October 1902, *Foreign Relations of the United States*, 1902, pp. 444 *et seq.*, p. 446.

### 2. The principle applied to the present case

6.63 In the present case this principle leads to the conclusion of Germany's liability to compensate Liechtenstein for the loss suffered arising from its own unjustified change in its position with respect to the assets seized under the "Beneš Decrees". In fact, Germany and Liechtenstein had previously taken the same position concerning those assets (a); in consequence of which Germany was not called upon to compensate victims of those decrees, including those of Liechtenstein nationality (b); but, having procured or accepted the termination of any express obligation as a result of the 1990 Exchange of Notes, Germany subsequently changed its position with respect to the Liechtenstein assets without any justification (c), thereby causing detriment to Liechtenstein and its nationals (d).

6.64 These facts and circumstances have already been reviewed in Part One of this Memorial, and are recited in the context of the unjust enrichment claim earlier in this Chapter. They may however once again be briefly recalled.

#### (a) The initial position of Germany and Liechtenstein concerning property seized under the "Beneš Decrees"

6.65 The initial position of Germany and Liechtenstein in the years before 1990 was that the property taken under the "Beneš Decrees" was not part of the reparations regime and would not be included in any of the provisions concerning that regime; this position applied *a fortiori* to Liechtenstein property having regard to the non-German character of that property and to the strict neutrality of Liechtenstein during World War II.[181] Liechtenstein had no need to take any different position.

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[181] See above paras. 1.1 to 1.9.

### (b) Germany's consequent refusal to compensate victims of the "Beneš Decrees" in the context of the reparations regime

6.66 In consequence of this common position, Germany consistently took the view, with which Liechtenstein agreed, that the Liechtenstein property was not part of the reparations regime, that Germany would not count it as such, and that in consequence it was under no obligation to compensate Liechtenstein or its nationals for the loss of that property.

### (c) Germany's unwarranted change of position after 1990

6.67 In 1990 Germany's express obligation to compensate those whose property was taken as German property under the reparations regime was terminated. Liechtenstein's legal position in respect of that change in the system of the Reparations Convention was of course unaffected, since it was so far as Liechtenstein was concerned *res inter alios acta*. But it was legitimate to infer from the agreements and actions of this period that the established approach to German property and the reparations regime would be maintained. For example the deletion of the reparations obligation was not intended to deprive any person of a right to compensation but was a reflection of Germany's view that the obligation to compensate had been fully performed.[182] But this turned out not to be the case.

6.68 In the period after 1995 Germany progressively took the position that the Liechtenstein property was covered by the reparations regime as German property, with the consequence, inter alia, that Liechtenstein's claim to such property, if in Germany or subject to the jurisdiction of the German courts, would be denied. This was a clear change of position on the part of Germany.[183]

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[182] See above para. 3.54.

[183] See above paras. 3.15 *et seq*.

.69 This position was referred to in an aide-mémoire of 4 October 1995 by Liechtenstein to Germany (Annex 35), which recited the facts and their consequences in the following terms:

> *"1945 wurde das Vermögen aller liechtensteinischer Staatsbürger, darunter auch umfangreicher Besitz des seinerzeit regierenden Fürsten von Liechtenstein, als Staatsoberhaupt, von der Regierung der Tschechoslowakei unter Ministerpräsident Benes entschädigungslos konfisziert. Zur Begründung berief sich die tschechoslowakische Regierung darauf, dass alle liechtensteinischen Staatsbürger als "Deutsche" im Sinne des Dekrets Nr. 12 vom 21. Juni 1945 anzusehen seien.*
>
> *Gegen diese Konfirmationen wurde sowohl auf diplomatischem als auch rechtlichem Wege von der seinerzeitigen Regierung Liechtensteins wie auch dem Fürsten von Liechtenstein vergeblich demonstriert. Ansätze zu einer Regelung dieser das Verhältnis zwischen Liechtenstein und der seinerzeitigen Tschechoslowakei belastenden Fragen wurden durch die Machtergreifung durch die kommunistische Partei zunichte gemacht.*
>
> *Nach der Rückkehr der demokratisch gewählten Regierung in der Tschechoslowakei wurden die liechtensteinischen Ansprüche auf Rückgabe - oder zumindest Entschädigung - durch die liechtensteinische Regierung erneuert. In grundsätzlicher Anerkennung des durch das kommunistische Regime verursachten Unrechts, erfolgten Restitutionen einzig von Konfiskationen und Enteignungen nach 1948. Alle Enteignungsakte auf der Grundlage der sog. Präsidenten-Dekrete von Ministerpräsident Benes wurden nicht in Frage gestellt.*
>
> *Anlässlich einer Ausstellung über niederländische Malerei in dem Kölner Walraff-Richartz-Museum mußte der regierende Fürst von Liechtenstein, Hans Adam II., feststellen, dass ein seit dem Jahre 1945 verschollen geglaubtes, in Wirklichkeit jedoch von der tschechoslowakischen Regierung aufgrund des Präsidenten-Dekretes Nr. 12 konfisziertes Bild aus dem fürstlichen Eigentum ausgestellt wurde. Durch seine deutschen Rechtsvertreter erwirkte er eine auf Sequestration gerichtet Sicherungsverfügung gegen die Stadt Köln als Besitzer des Bildes und Rechtsträger des Walraff-Richartz-Museums. In dem sich anschließenden Hauptsacheverfahren, gerichtet gegen die Stadt Köln als Besitzer, trat die Tschechische Republik als Streithelfer auf Seiten der Stadt Köln dem Prozeß bei,*

*weigerte sich jedoch, diesen anstelle der Stadt Köln zu übernehmen. Diese bleibt vielmehr nach wie vor Hauptpartei dieses Rechtsstreits.*

*Im Verlaufe dieses Prozesses wurde von der Tschechischen Republik die Behauptung wiederholt, dass Liechtenstein einen Teil der deutschen Nation bilde und alle liechtensteinischen Staatsbürger, also auch das Staatsoberhaupt von dem Fürstentum Liechtenstein, als Deutsche anzusehen seien.*

*Da die Stadt Köln dieser Rechtsauffassung ihrer eigenen Streithelferin in dem Prozeß nicht entgegengetreten ist, wird ihr diese nach der deutschen Zivilprozeßordnung zugerechnet. Da auf der anderen Seite die Stadt Köln als öffentlich-rechtliche Körperschaft einen Teil der Bundesrepublik Deutschland darstellt und der Rechtsaufsicht des Landes Nordrhein-Westfalen unterliegt, stellen sich folgende Fragen:*

*1. Entspricht die von der Stadt Köln mittelbar eingenommene Haltung auch der Auffassung der Bundesrepublik Deutschland?*

*2. Sollte die Haltung der Stadt Köln nicht der Auffassung der Regierung der Bundesrepublik Deutschland entsprechen, welche Möglichkeiten gibt es, auf die Stadt Köln einzuwirken, von derartigen rechtsverbindlichen Erklärungen mit weitreichenden Konsequenzen auch auf das Verhältnis zwischen dem Fürstentum Liechtenstein und der Bundesrepublik Deutschland im Hinblick auf die Reparationsfrage abzusehen, um ein einheitliches Bild in der außenpolitischen Haltung der Bundesrepublik Deutschland gegenüber dem Fürstentum Liechtenstein wiederherzustellen?"*

Translation:
"In 1945, the property of all Liechtenstein citizens, including extensive property owned by the then Reigning Prince of Liechtenstein as Head of State, was confiscated without compensation by the Government of Czechoslovakia under President Beneš. Stating the reasons for their measures, the Czechoslovak Government invoked the provision that all Liechtenstein citizens had to be regarded as 'Germans' within the meaning of the Decree No. 12 of 21 June 1945.

At the time, the then Government of Liechtenstein and the Prince of Liechtenstein demonstrated against such confirmations both by diplomatic and legal means, but without success. Initial stages of an attempt to solve this problem which weighed on the relationship between Liechtenstein and the then State of Czechoslovakia were destroyed when the Communist Party seized power.

Upon the return of a democratically elected Government in Czechoslovakia, the Liechtenstein Government renewed Liechtenstein claims for restitution - or at least compensation. In principle acknowledgment of the injustices suffered under the communist regime, restitutions were only effected for confiscations and expropriations carried out after 1948. All expropriation measures carried out on the basis of the so-called Presidential Decrees of President Beneš were not called into question.

On the occasion of an exhibition about Dutch painting in the Walraff-Richartz Museum in Cologne, the Reigning Prince of Liechtenstein, Hans-Adam II, was surprised to find that a painting shown there had belonged to the princely property and was presumed to be lost since 1945, while it had in fact been confiscated by the Czechoslovakian Government on the basis of the Presidential Decree N. 12. By the agency of his German legal representatives, the Prince obtained an order against the Municipality of Cologne - possessing the painting at the time in its capacity as the legal entity responsible for the Walraff-Richartz-Museum - to have the painting kept in the custody of a sequestrator. In the proceedings on the merits of the case, in which the Municipality of Cologne as possessor of the painting acted as defendant, the Czech Republic intervened as a third party on the side of the Municipality of Cologne, but refused to take the place of the Municipality of Cologne in the proceedings. Hence, the latter has remained principal party of this lawsuit.

In the course of the proceedings, the Czech Government repeated its assertion that Liechtenstein was part of the German nation and that all Liechtenstein citizens, i.e. inclusive of the Head of State of the Principality of Liechtenstein, have to be regarded as Germans.

During the proceedings, the Municipality of Cologne did not counter this legal opinion presented by the third party intervening on the side of Cologne, and hence such opinion is attributable to the Municipality of Cologne in accordance with the German Code of Civil Procedure. Considering that, on the other side, the Municipality of Cologne as a public corporation is part of the Federal Republic of Germany and - as far as questions regarding the legality of administrative activities are concerned - under the authority of the Land North-Rhine Westphalia, the following questions arise:

> 1. Does the position indirectly taken by the Municipality of Cologne correspond to the position taken by the Federal Republic of Germany?
>
> 2. In the event that the position of the Municipality of Cologne does not correspond to the point of view supported by the Government of the Federal Republic of Germany, what possible means are available to influence the Municipality of Cologne to the effect that the latter will refrain from making such declarations of a legally binding nature which are bound to have far-reaching consequences for the relationship between the Principality of Liechtenstein and the Federal Republic of Germany also with respect to the reparation issue, and in order to restore the Federal Republic of Germany's consistent attitude vis-à-vis the Principality of Liechtenstein with regard to foreign affairs?"

6.70 Germany did not formally reply to this note, but its subsequent conduct, as evidenced by the position taken before the German courts,[184] before the European Court of Human Rights,[185] and in subsequent diplomatic exchanges[186] evidences its refusal "to restore the Federal Republic of Germany's consistent attitude vis-à-vis the Principality of Liechtenstein with regard to foreign affairs".

6.71 It is not for Liechtenstein to seek to justify Germany's conduct in this regard; Germany can plead such justifications as it wishes to propose in the course of the pleadings in the present case. But in any event, no justification or warrant for Germany's change of position appears. As noted already, Germany was not in a situation such as *force majeure*, distress or a state of necessity - which might apply even in absence of responsibility - of such a nature that it had to adopt the behaviour it took; nor has Liechtenstein consented to or acquiesced in this behaviour.

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[184] See above paras. 3.31 *et seq*.

[185] See above paras. 3.37 *et seq*.

[186] See above paras. 3.42 *et seq*.

### (d) The detriment to Liechtenstein arising from Germany's change of position

6.72 Liechtenstein and its nationals have suffered detriment as a result of Germany's unjustified change of position, and have done so in a number of ways. These need only to be summarized here.

6.73 In the first place, there was the loss of the Pieter-van-Laer painting itself, to which on the basis of Germany's own prior position Liechtenstein had, as a minimum, a legitimate claim. But the detriment does not stop with the immediate object of the litigation before the German courts, and the present claim would not have been brought if that was all that was at stake. Over and above the immediate issues associated with the return of the painting to the Czech Republic are the following elements: the opening up of a channel for the disposition of Liechtenstein movable property seized under the "Beneš Decrees"; the reinforcement of the Czech position with respect to the dispute, and the consequent harm to Liechtenstein nationals in terms of the further pursuit of their claims, as well as the direct moral and other injury suffered by reason of the classification of their property as German and its inclusion, without any manner of justification, in the war reparations regime. Furthermore the delay in the German change of position deprived Liechtenstein's citizens from the opportunity of seeking and obtaining compensation from Germany, whether in the courts or otherwise.

## D. Conclusion

6.74 For these reasons, in addition to those presented in the preceding Chapters of this Memorial, it is submitted that the Respondent State is responsible to Liechtenstein, on its own behalf and on behalf of its nationals, in respect of the injury suffered by Germany's unjustified enrichment at their expense, and by virtue of their detrimental and fruitless reliance on Germany's good faith in maintaining the reparations regime in a form which did not implicate Liechtenstein or its nationals.

# CHAPTER 7

# LEGAL CONSEQUENCES OF GERMANY'S CONDUCT TOWARDS LIECHTENSTEIN

## A. Germany's obligations of cessation and reparation (including compensation)

7.1 As demonstrated in the preceding Chapters, by including the Liechtenstein property within the scope of the post-war reparations regime Germany breached its international obligations towards Liechtenstein. As reflected in Article 12 of the International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts, annexed to General Assembly resolution 56/83 of 12 December 2001 (the ILC Articles), this conduct gives rise to the international responsibility of Germany. Article 12 provides:

> "There is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character."

There is no doubt that any breach of an international obligation incumbent upon a State entails its international responsibility, with all its remedial consequences.

7.2 This legal principle is firmly rooted in international law. It was already expressed by the Permanent Court of International Justice:

> "This act being attributable to the State and described as contrary to the treaty right of another State, international responsibility would be established immediately as between the two States."[187]

In the *Rainbow Warrior* case, the Arbitral Tribunal emphasised that "any violation by a State of any obligation, of whatever origin, gives rise to State responsibility".[188]

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[187] *Phosphates in Morocco (Preliminary Objections)*, 14 June 1938, PCIJ, Series A/B, No. 74, pp. 7 *et seq.*, p. 28.

[188] Arbitral Tribunal Award, 30 April 1990, *Rainbow Warrior (New Zealand/France)*, Decision of 30 April 1990, UNRIAA, Vol. XX, pp. 217 *et seq.*, p. 251.

7.3 Article 1 of the ILC Articles reflects this principle:

> "Article 1
>
> Responsibility of a State for its internationally wrongful acts
>
> Every internationally wrongful act of a State entails the international responsibility of that State."

This principle is confirmed in Article 28:

> "Article 28
>
> Legal consequences of an internationally wrongful act
>
> The international responsibility of a State which is entailed by an internationally wrongful act in accordance with the provisions of Part One involves legal consequences as set out in this Part."

The commentary refers to decisions of this Court, of its predecessor and of arbitral tribunals as well as the relevant doctrine which emphases this duty and which establish the universal applicability of this principle.[189]

7.4 Germany explicitly recognized this general principle in its pleadings in the *LaGrand* case before this Court:

> "Germany submits that the general rules of State responsibility are applicable to all kinds of internationally wrongful acts unless expressly stipulated otherwise. This derives from the very nature of the rules on State responsibility as 'secondary rules' which are to be applied whenever 'primary' obligations have not been observed... To state otherwise would mean that it would be necessary for each and every treaty or convention to reiterate the rules on State responsibility."[190]

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[189] ILC Report 2001, UN General Assembly, Official Records, A/56/10, pp. 63-65, esp. Nos. 35-48.

[190] *La Grand Case (Germany v. United States of America)*, Memorial of the Federal Republic of Germany, Vol. I, 16 September 1999, para. 6.06.

7.5 The legal content of State responsibility is laid out in Articles 28 and following of the ILC Articles. A responsible State remains obliged to comply with the rule breached, as the breach does not terminate the obligation. This effect is reflected in Article 29 of the ILC Articles, entitled "Continued duty of performance":

> "The legal consequences of an internationally wrongful act under this Part do not affect the continued duty of the responsible State to perform the obligation breached."

As a result of this obligation Germany continues to be bound to respect the neutrality of Liechtenstein, which the latter faithfully observed during World War II, and Germany has to desist from any acts which impairs this status.

### B. The remedial situation

7.6 Although the legal consequences arising from an internationally wrongful act are determined by international law and arise irrespective of the will of the injured State, nonetheless it is in the first instance a matter for that State to indicate what forms of remedy it seeks in respect of any particular breach. This is reflected in Article 43 of the ILC Articles, pursuant to which an injured State "may specify in particular… (b) what form reparation should take in accordance with the provisions of Part Two".

7.7 In the consultations that took place between Liechtenstein and Germany, which are described in Chapter 3 above, Liechtenstein sought in the first instance an acknowledgement by Germany of its breach of the relevant obligations and assurances of respect in the future for Liechtenstein's sovereignty, and for the property rights and claims of its citizens. Germany not only refused to make such an acknowledgement but in the course of the discussions made it clear that its attitude was not limited to the Pieter-van-Laer painting, the subject of the proceedings before the German courts; it applied to the Liechtenstein property as a whole and in general.[191]

7.8 Liechtenstein further claimed that this conduct of Germany, whether or not it was as such a breach of an international obligation of Germany to Liechtenstein, entailed an obligation on the part of Germany to compensate for loss suffered by Liechtenstein's nationals. Whether or not Germany was entitled to treat the Liechtenstein property as falling within the scope of the reparations regime, it was in any event required to compensate the owners of the property in question, either directly or by way of action by Liechtenstein on their behalf. As explained in Chapter 6, Germany's unjust enrichment at Liechtenstein's expense, and its unjustified change of position in the matter of the scope of the reparations regime, also entail an obligation to compensate persons affected thereby, independently of any responsibility as well as for its unjust enrichment and/or its change of position to Liechtenstein's detriment. But in the consultations referred to in the previous paragraph and in other diplomatic exchanges (as set out in Chapter 3), Germany also refused to make compensation consequential upon its classification of the Liechtenstein property as falling within the scope of the reparations regime. The remedies sought by Liechtenstein thus encompass remedies for all internationally wrongful acts of Germany, including its failure to compensate under the relevant primary obligations.

### 1. Declaratory relief

7.9 Liechtenstein seeks in particular to ensure respect for its sovereignty and neutrality, and for their legal consequences under the reparations regime. Liechtenstein having maintained strict neutrality during World War II, its property is in no case to be classified as property seized on account of reparations, nor is the value of that property to be accounted for in terms of any final settlement of reparations claims arising from the war and its aftermath. In any event, any losses suffered by the owners of the Liechtenstein property are to be made good by compensation.

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[191] See above paras. 3.37 *et seq.* and 3.42 *et seq.*

7.10 In these circumstances, Liechtenstein seeks, in the first instance, a declaration from the Court of the resulting legal situation in terms of Germany's responsibility.

### 2. Cessation and assurances and guarantees of non-repetition

7.11 Secondly, Liechtenstein seeks to ensure that Germany ceases for the future to consider the Liechtenstein property as having been "seized for the purposes of reparation or restitution, or as a result of the state of war", i.e. as covered by the reparations regime. In the *LaGrand* case Germany itself sought guarantees of non-repetition in order to prevent further violations of its rights and those of its nationals in the future. Quoting literature[192] as well as judicial practice,[193] it declared that this duty was "in full accordance with international practice and doctrine". In its judgment, this Court held:

> "that the commitment expressed by the United States to ensure implementation of the specific measures adopted in performance of its obligations under Article 36, paragraph 1 (b), [of the Vienna Con-

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[192] "En général, dans tous les cas de préjudices de caractère moral et politique, l'État lésé, entre autres formes de satisfaction demande des assurances de sécurité pour l'avenir, ce qui signifie que l'État intéressé s'acquittera avec plus de diligence ou plus d'efficacité de son devoir de protection.", F. Przetacznik,"La responsabilité internationale de l'État à raison des préjudices de caractère moral et politique causés à un autre État", 78 *Revue générale de Droit international public* 1974, pp. 919 *et seq.*, pp. 966-967, and the examples cited therein. See also, *inter alia*, Sir R. Jennings and Sir A. Watts, (eds.) *Oppenheim's International Law*, Vol. 1, 9th ed., Longman, London, 1992, p. 532; I. Brownlie, *Principles of Public International Law,* 5th ed., Clarendon, Oxford, 1998, p. 463 (counting guarantees among measures of satisfaction).

[193] The International Tribunal for the Law of the Sea explained that "(r)eparation may be in the form of 'restitution in kind, compensation, satisfaction and assurances and guarantees of non-repetition either singly or in combination' "; *M/V "Saiga" (No. 2) Case (Saint Vincent and the Grenadines v. Guinea)*, Judgment of 1 July 1999, 38 ILM 1999, pp. 1323 *et seq.*, p. 1357, para 171.

> vention on Consular Relations of 1963] must be regarded as meeting Germany's request for a general assurance of non-repetition."[194]

However, it continued that:

> "...if the United States, notwithstanding its commitment referred to ... should fail in its obligation of consular notification to the detriment of German nationals, an apology would not suffice in cases where the individuals concerned have been subjected to prolonged detention or convicted and sentenced to severe penalties. In the case of such a conviction and sentence, it would be incumbent upon the United States to allow the review and reconsideration of the conviction and sentence by taking account of the violation of the rights set forth in the Convention."[195]

7.12 Article 30 of the ILC Articles, entitled "Cessation and non-repetition", reflects this duty. It provides:

> "The State responsible for the internationally wrongful act is under an obligation:
> a) To cease that act, if it is continuing;
> b) To offer appropriate assurances and guarantees of non-repetition, if circumstances so require."

As a consequence of the breach of respect of the sovereignty and neutrality of Liechtenstein and the rights of its nationals, Germany is under the duty to offer these measures. The circumstances of the case require such assurances and guarantees in view of the particular legal nature of the acts by which the new German position has been created. Without such a guarantee, Liechtenstein would have no certainty that a German court in future will not take again a decision in disrespect of the neutrality of Liechtenstein during World War II. Germany is bound to ensure that in future no legal ground will exist which could enable a judgment equivalent to that relating to the property of its nationals.

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[194] *La Grand Case* (*Germany v. United States of America*), 27 June 2001, para. 124.

[195] *Ibid*, para. 125.

### 3. Reparation and, in particular, compensation

7.13 In addition to the aforementioned obligations, Germany is obliged to provide full reparation for the wrong it has committed towards Liechtenstein, whether by its inclusion of the Liechtenstein property within the scope of the reparations regime or by its failure to compensate the owners of that property as a consequence of such inclusion.

7.14 As the Court most recently affirmed in its judgment in the *Arrest Warrant* case,[196] it is a general principle of law that "reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed".[197] Depending on the type and extent of damage, the relevant primary norm violated as well as the circumstances of the case, reparation takes the form of restitution, compensation and satisfaction.[198]

7.15 Article 35, entitled "Restitution", provides as follows:

> "A State responsible for an internationally wrongful act is under an obligation to make restitution, that is, to re-establish the situation which existed before the wrongful act was committed, provided and to the extent that restitution:
> (a) Is not materially impossible;
> (b) Does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation."

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[196] *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, 14 February 2002, para. 76.

[197] *Factory at Chorzów, (Merits)*, 13 September 1928, PCIJ, Ser. A, No. 17, 1928, p. 47.

[198] See Article 34 of the Articles on Responsibility of States for Internationally Wrongful Acts, *ILC Report*, 2001, UN General Assembly, Official Records, A/56/10, p. 52.

In cases where the wrongful act consists of a domestic judicial decision, restitution requires the abrogation of that decision or judgment.[199] From the point of view of international law, the fact that domestic law may not readily allow for such a measure, is immaterial for the responsible State's obligation to restitution because the provisions of the internal law of the author State may not serve as justification for failure to comply with an international obligation.[200] Neither may the wrongdoing State in such cases rely on material impossibility of restitution; since legal acts, including final judicial decisions, can in principle always be rescinded. Even though a change in the domestic legal order may give rise to difficulties or may even require an amendment of the responsible State's constitution, such abrogation can never be materially impossible.[201]

7.16 As established in this Memorial, the conduct of Germany violates Liechtenstein's rights and its status as a neutral State during World War II, as well as the rights of its nationals. Germany is obliged to re-establish the situation that existed prior to this violation. In the present case, Germany is therefore obliged to provide restitution, as set out in Article 35 of the ILC Articles.

7.17 Insofar as restitution does not make good the damage caused by the wrongful act, the State responsible for this act has to provide compensation for the material damage suffered by the injured State.[202] Compensation covers any financially assessable damage incurred by the State directly or indirectly through its nationals. In the present case, Liechtenstein has incurred financially assessable damage by reason of the injury and detriment suffered by the owners of the Liechtenstein property, and Germany is obliged to compensate for this.

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[199] Cf. Arbitral Tribunal Award, the *Martini* case (*Italy v. Venezuela),* 3 May 1930, UNRIAA, Vol. II, pp. 973 *et seq.*, p. 1002.

[200] See Article 32 of the Articles on Responsibility of States for Internationally Wrongful Acts, *ILC Report*, 2001, UN General Assembly, Official Records, A/56/10, p. 51.

[201] W. Riphagen, "State Responsibility. Sixth report on the content, forms and degrees of international responsibility; and "Implementation" (*mise en oeuvre*) of international responsibility and the settlement of disputes (part 3 of the draft articles)", *Yearbook of the International Law Comission* 1985, Vol. II, part 1, pp. 3 *et seq.*, p. 9, sub-para. (9); G. Arangio-Ruiz, "Preliminary report on State responsibility", *Yearbook of the International Law Comission* 1988, Vol. II part 1, pp. 6 *et seq.*, p. 33, para. 98; J. Crawford, "Third report on State responsibility. Addendum", A/CN.4/507/Add.1, 15 June 2000, pp. 4-18, paras. 124-146.

[202] See Article 36 of the Articles on Responsibility of States for Internationally Wrongful Acts, ILC Report, 2001, UN General Assembly, Official Records, A/56/10, p. 52.

7.18 Alternatively, as explained in paragraph 7.8 above, Germany is under a primary obligation to provide compensation consequential upon the inclusion of the Liechtenstein property within the scope of the reparations regime. Its failure to provide such compensation is thus in itself an internationally wrongful act.

7.19 To the extent that neither restitution nor compensation can wipe out all the injurious consequences of the internationally wrongful acts referred to above, the responsible State has to provide satisfaction for the non-material damage suffered by the injured State. Typical cases of non-material damage involve violations of State sovereignty, i.e., of respect for the identity and personality of the State.[203] Included in this category is a failure of respect for a State's neutrality and for the rights of its nationals. Appropriate forms of satisfaction would include a declaration by the Court of the wrongfulness[204] and an apology by the respondent State.[205] In the present case, by its failure to respect Liechtenstein's status as a sovereign and neutral State, Germany violated Liechtenstein's rights and caused non-material damage to Liechtenstein for which it has to provide satisfaction in the form of an apology.

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[203] The *Corfu Channel* Case (Merits), 9 April 1949, *I.C.J. Reports* 1949, pp. 4 *et seq.*, p. 35.

[204] *The M/V "Saiga" (No. 2) Case (Saint Vincent and the Grenadines v. Guinea)*, 1 July 1999, 38 ILM 1999, pp. 1323 *et seq.*, p. 1358, para. 176; *Rainbow Warrior (New Zealand/France)*, Decision of 30 April 1990, UNRIAA, Vol. XX, pp. 217 *et seq.*, pp. 272-273.

[205] Arbitral Tribunal Award, 5 January 1935, *The "I'm Alone" case (Canada/U.S.A)*, UNRIAA, Vol. III, pp. 1609 *et seq.*, p. 1618; *Rainbow Warrior (New Zealand/France)*, 6 July 1986, UNRIAA, Vol. XIX, 1986, pp. 199 *et seq.*, p. 213.

## 4. Conclusion

7.20 Accordingly, Liechtenstein requests that the Court make a declaration as to the responsibility, in principle, of Germany for its failure to respect the sovereignty and neutrality of Liechtenstein, and for its failure to compensate Liechtenstein for losses suffered, as set out in this Memorial. The Court should correspondingly decide on the appropriate forms of cessation and reparation among those discussed in this Chapter. In particular, it should declare that by reason of the breaches of obligation towards Liechtenstein, Germany is obliged to pay compensation for these breaches. Liechtenstein requests the Court, in a subsequent phase of the proceedings, to determine and to assess the amount of compensation due.[206]

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[206] See *Fisheries Jurisdiction* (*Federal Republic of Germany v. Iceland*), 25 July 1974, *I.C.J. Reports* 1974, pp. 175 *et seq.*, pp. 204-206, paras. 76-77; *Case Concerning United States Diplomatic and Consular Staff in Tehran*, 24 May 1980, *I.C.J. Reports* 1980, pp. 3 *et seq.*, pp. 45 *et seq.* (operative para. 6).

## CONCLUSION AND SUBMISSIONS

1. For the reasons set out above, and reserving the right to amend these submissions in the light of further evidence and argument, the Principality of Liechtenstein requests the Court to adjudge and declare that:

   (a) by its conduct with respect to Liechtenstein and the Liechtenstein property, Germany has failed to respect the sovereignty and neutrality of Liechtenstein and the legal rights of Liechtenstein and its nationals with respect to the property;

   (b) by its failure to make compensation for losses suffered by Liechtenstein and its nationals, Germany is in breach of the rules of international law;

   (c) consequently Germany has incurred international legal responsibility and is bound to provide appropriate assurances and guarantees of non-repetition, and to make appropriate reparation to Liechtenstein for the damage and prejudice suffered.

2. Liechtenstein further requests that the amount of compensation should, in the absence of agreement between the parties, be assessed and determined by the Court in a separate phase of the proceedings.

Dr. Alexander Goepfert
Agent of the Principality of Liechtenstein
Vaduz
28 March 2002

# CASE CONCERNING CERTAIN PROPERTY
# (LIECHTENSTEIN v. GERMANY)

# ANNEXES
# TO THE
# MEMORIAL OF THE PRINCIPALITY OF LIECHTENSTEIN

## VOLUME I
## Annexes 1 to 17

**28 MARCH 2002**

## Annex 1

## NOTE OF THE LIECHTENSTEIN GOVERNMENT ADDRESSED TO THE POLITICAL DEPARTMENT OF THE SWISS CONFEDERATION IN BERN OF 30 AUGUST 1939

## Translation of the German Original

His Serene Reigning Highness, Prince Franz Josef II of Liechtenstein, asked the Prince's Government to inform the Political Department of the Swiss Confederation in Bern that Liechtenstein will maintain strictest neutrality in the event of an outbreak of war.

The Prince's Government would like to ask you to kindly inform all Powers that might be involved in a possible conflict of the Principality's attitude, and would also like to thank you in advance for your effort involved in this respect. The Prince's Government avails itself of this opportunity to renew to the Political Department of the Swiss Confederation the assurance of its high esteem and consideration.

Vaduz, August 30, 1939

To

the Confederate Political Department

Bern.

## Annex 2

## STATEMENT OF THE SWISS AMBASSADOR FRÖLICHER: COPIE DE RÉCEPTION OF 1 SEPTEMBER 1939

Translation of the German Original

## 143

E 2001 (D) 3/303

*Le Ministre de Suisse à Berlin, H. Frölicher, au Département politique*

(French Original)

*Copie de réception*

(French Original)

*T* B 2 5 4 6

*N°* 32.

Berlin, 1er septembre 1939, 13 h 25

(French Original)

(*Reçu*: 1er septembre, 16 h 45)

(French Original)

Have delivered neutrality declaration to Weizsäcker at 1.30 p.m. It was received with thanks. In particular also the assurance is to assistance in respect of humanitarian acts. State Secretary (Staatssekretär) in addition made reference to declaration Minister Köcher has given regarding respect for neutrality[1]. Liechtenstein's declaration of neutrality was similarly accepted in an affirmative way. It was said that there was no state of war yet, but during the course of the day, the embassy in Warsaw would be instructed to leave. Fighting was taken place in the Westerplatte. It was practically impossible to avoid the war. Burckhardt in Königsberg intended to return via Lithuania, Finland. Foreign Office has given instruction to facilitate return in every respect.

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[1] *Cf. N° 132.*

## Annex 3

### NOTE OF THE FOREIGN OFFICE OF THE UNITED KINGDOM TO THE SW AMBASSADOR IN LONDON OF 1 SEPTEMBER 1939

No. R 7017/6590/43.

FOREIGN OFFICE, S.W.1.
1st September, 1939.

Sir,

I have the honour to acknowledge the receipt of your note of the 31st August in which you conveyed to me the text of a declaration by His Serene Highness the Prince of Liechtenstein affirming that in the event of the outbreak of war the Principality of Liechtenstein will maintain the strictest neutrality.

2. I shall be glad if you will cause His Serene Highness to be informed that His Majesty's Government in the United Kingdom have taken due note of this communication

3. His Serene Highness may rest assured that i in the event of a European war, Liechtenstein adopts an attitude of neutrality, His Majesty's Government in the United Kingdom will, in accordance with their traditional policy, be resolutely determined to respect this neutrality, provided that it is respected by other Powers.

I have the honour to be,
with the highest consideration,
Sir,
Your obedient Servant,
(For the Secretary of State)
(Signature)
E.M.B. Ingram

onsieur Charles Paravicini,⑦
etc., etc., etc.,
An Schweizer Botschafter in London

## Annex 4

## NOTE OF THE ITALIAN MINISTRY OF FOREIGN AFFAIRS TO THE SWISS AMBASSADOR IN ROME OF 4 SEPTEMBER 1939

Translation of the Italian Original

Copy

Ministry of Foreign Affairs

-- -- --- Rome, September 4, 1939

Year XVII

220364/96

Mr. Ambassador,

I have the honour to acknowledge receipt of your note dated 1 September concerning the declaration of neutrality of the Principality of Liechtenstein.

I may inform you that the Fascist Government has taken note of such communication and may assure you, Mr. Ambassador, of my highest consideration.

(fto) Ciano

| | |
|---|---|
| His Excellency | copy to: |
| Mr. Paul Ruegger, | Ambassador of Switzerland |
| Ambassador of Switzerland, | (Signature) |
| Rome | |

(Coat of Arms)

## Annex 5

# NOTE OF THE FOREIGN MINISTRY OF THE FRENCH REPUBLIC TO THE SWISS EMBASSY IN PARIS OF 10 SEPTEMBER 1939

COPIE.

Ministère
des
Affaires Etrangères
----:-----
DIRECTION POLITIQUE

REPUBLIQUE FRANCAISE
------;------

Paris, le 10 septembre 1939.

A la date du 1er septembre 1939, la Légation de Su se a bien voulu faire part au Ministère des Affaires Etrang res d'une décision prise par Son Altesse Sérénissime le Prince régnant de Liechtenstein, et aux termes de laquelle, en cas de conflit armé, la Principauté de Liechtenstein observera la plus stricte neutralité.

Le Ministère des Affaires Etrangères a l'honneur d'accuser réception à la Légation de Suisse de sa communication./.

LEGATION DE SUISSE,
à PARIS.

## Annex 6

# CZECHOSLOVAKIAN DECREE NO. 12 CONCERNING THE CONFISCATION AND ACCELERATED ALLOCATION OF AGRICULTURAL PROPERTY OWNED BY GERMANS, HUNGARIANS AND ALSO BY PEOPLE WHO HAVE COMMITTED TREASON AND ACTED AS ENEMIES OF THE CZECH AND SLOVAK PEOPLE OF 21 JUNE 1945

Translation of the Czech Original

## 12.

## Decree of the President of the Republic

## of 21 June 1945

concerning the confiscation and accelerated
allocation of agricultural property owned by Germans, Hungarians and also by people
who have committed treason and acted as enemies of the
Czech and Slovak people.

In order to accommodate Czech and Slovak peasants and people who do not own any land and call for a consistent implementation of a new land reform, and in particular guided by the intention to take Czech and Slovak land once and for all out of the hands of foreign German and Hungarian landowners and also out of the hands of traitors of the Republic, and in order to give it into the hands of the Czech and Slovak peasantry and people not owning any land, thereby order upon the government´s proposal:

### § 1

(1) For the purposes of land reform, agricultural property owned by the following persons is confiscated with immediate effect and without compensation:

a) all persons belonging to the German and Hungarian people, regardless of their nationality,

b) persons who have committed treason and acted as enemies of the Republic, regardless of their nationality, and who have shown their hostility in particular during the years of crisis and the war between 1938 and 1945,

c) joint-stock and other companies and corporations, whose management wilfully and intentionally served German warfare or fascist and Nazi purposes.

(2) The agricultural property of persons belonging to the German and Hungarian people, who actively participated in the fight to maintain the integrity and to liberate the Czechoslovak Republic shall not be confiscated pursuant to paragraph 1 above.

(3) The competent district national committee shall decide on whether to grant or not an exemption pursuant to paragraph 2 above, on the basis of a proposal of the competent farmers‘ commission. The district national committee shall submit doubtful cases to the regional national committee, which shall forward them, together with its standpoint, for a final decision to the Ministry of Agriculture, which shall make a decision in agreement with the Ministry of Interior.

§ 2

(1) Those persons are considered to belong to the German or Hungarian people who declared on the occasion of every census since the year 1929 that they belonged to the German or Hungarian people, or who have become members of national groups or political parties made up of persons belonging to the German or Hungarian people.

(2) Exceptions to the provisions of paragraph 1 will be laid down in a separate Decree.

§ 3

(1) The following persons shall be considered traitors and enemies of the Czechoslovak Republic:

a) persons who collectively or individually carried out activities aimed against the state sovereignty, independence, integrity, democratic-republican state form, safety and defence of the Czechoslovak Republic, who instigated such activities or strived to seduce other persons, and who intentionally and actively supported the German and Hungarian occupants by any means,

b) amongst legal persons, such persons whose management intentionally and actively served German or Hungarian warfare or fascist and Nazi purposes.

(2) The regional national committee in whose district the relevant real estate property is located shall decide on whether a natural or legal person falls within the provision of paragraph 1 (a) and (b) above, on the basis of a proposal of the competent district national committee. The regional national committee shall submit doubtful cases for final decision to the Ministry of Agriculture, which shall make a decision in agreement with the Ministry of Interior.

## § 4

Agricultural property [§ 1(1)] means agricultural and forest land which also comprises buildings and installations pertaining thereto, agricultural industrial undertakings used for the owner's agricultural and forrestry activities, as well as movable property pertaining thereto (livestock and equipment) and all rights related to the confiscated property or part thereof.

## § 5

(1) Where agricultural property confiscated pursuant to § 1 is subject to lease (tenancy), all lease (tenancy) contracts shall be terminated. However, if a person who is entitled to allocation of land [§ 7 (1)] is a lessee (tenant), such person may be allowed to continue the current use to the end of the economic year. If the leased (rented) agricultural property is not allocated for any reason, the lessee (tenant) shall pay the rent to the National Land Fund [§ 6 (1)]. Where natural or legal persons who do not fall within § 3 are affected by confiscation, the National Land Fund shall provide them with compensation for day-to-day expenses and investment, on the basis of a proposal of the local national committee.

(2) The patronage rights and obligations attached to agricultural properties confiscated pursuant to § 1 shall expire on the day of confiscation. In cases deserving special consideration, the National Land Fund shall provide compensation.

(3) The subject of debts and claims attached to the confiscated properties (§ 1) shall be resolved by a Government regulation. Salaries, pensions, taxes and other usual expenditures shall be provisionally paid by the National Administrator.

### § 6

(1) Agricultural property confiscated pursuant to § 1 shall be managed, until its handover to the beneficiaries, by the National Land Fund attached to the Ministry of Agriculture, which is hereby established. The Government is authorized to issue the Statute of the Fund.

(2) Continuous forest areas with an area exceeding 50 ha that are confiscated pursuant to § 1 shall be taken over by the state. If confiscated forest areas cannot be combined in a continuous unit with state forest land and if their extent does not exceed 100 ha, the National Land Fund shall transfer them to the competent national committee.

### § 7

(1) From the agricultural property managed by the National Land Fund, land shall be allocated to the ownership of the following persons belonging to the Slavic people:

a) allowanced persons and agricultural workers, to the extent of up to 8 ha of arable land or up to 12 ha of farmland, with regard to its quality,

b) small farmers, to the extent supplementing the property currently owned thereby, up to the maximum of 8 ha of arable land or 12 ha of farmland, with regard to its quality,

c) large farmers' families, to the extent supplementing the property currently owned thereby, up to the maximum of 10 ha of arable land or 13 ha of farmland, with regard to its quality,

d) municipalities and districts for public purposes,

e) construction, agricultural and other co-operatives consisting of authorised applicants pursuant to subparagraphs a), b), c) and f),

f) workers, public and private employees and small entrepreneurs, for construction of their own houses or for establishing a garden, to the maximum extent of 0.5 ha.

(2) In districts with a majority of German population, where there are no applicants belonging to the Czech or other Slavic people, eligible pursuant to paragraph 1 (a) to (f), the land shall remain under management of the National Land Fund for the purposes of internal settlement.

(3) Forest land of up to 50 ha or 100 ha [§ 6 (2)], respectively, may be allocated to municipalities and forest co-operatives. Such land shall be subject to state supervision.

(4) Confiscated buildings, facilities serving for actual agricultural or forest management, forest industry enterprises, orchards, monuments, archives, etc., as well as the confiscated buildings, installations used for the owner's agricultural or forrestry activities, agricultural industrial undertakings, gardens, memorabilia, archives, etc, as well as all confiscated real property unless donated to public entities may be allocated to the ownership of:

a) co-operatives composed of authorised applicants, for the purpose of common use,

b) exceptionally, individuals (beneficiaries) specified in paragraph 1 (a) to (c).

(5) A decision on whether the confiscated property shall be allocated to co-operatives or individuals shall be made pursuant to § 9 *mutatis mutandis*.

(6) Persons who distinguished themselves and gained recognition in the fight for national liberation, in particular soldiers and partisans, former political prisoners and deported persons, and their family members and legal heirs, as well as farmers harmed by the war, shall have the preferential right to allocation. The preferential right must be duly proven.

### § 8

Property allocated pursuant to § 7 may be alienated, leased or encumbered only with the prior consent of the National Land Fund.

(1) Applicants authorised pursuant to § 7 (1) (a), (b), (c), (d) and (f) shall elect a local farmers' commission, consisting of not more than 10 members, attached to the local national committee, in whose district the confiscated property is located.

(2) In the course of its meeting, representatives of local farmers' commissions shall elect a district farmers' commission attached to the district national committee, which may consist of no more than 10 members.

(3) A local farmers' commission shall draw up an allocation plan including a proposal for payment (§ 10) for the allocated property and submit it to the district farmers' commission for approval.

(4) A district farmers' commission shall review the submitted allocation plans and proposals for payment and, on the basis thereof, it shall draw up an allocation plan and payment schedule for the entire district. If there is no variance between the allocation plans and proposals for payment, submitted by the individual local farmers' commissions, or if agreement is reached by them, the district allocation plan and payment schedule shall come into effect following approval pursuant to paragraph 5.

(5) The allocation plan of a district farmers' commission including the payment schedule shall be immediately submitted to the regional national committee, which shall forward it together with its standpoint to the Ministry of Agriculture, which may modify the allocation plan with payment schedule, where important public or national interests could be endangered or where the provisions of § 7 (1) (a) to (f) were not complied with. In relation to forest industry enterprises [§ 7 (4)], for allocations pursuant to § 7 (4) (b), the Ministry of Agriculture shall make the relevant decision in agreement with the Ministry for Nutrition.

(6) If a district farmers' commission cannot resolve variances between allocation plans with proposals for payment, as submitted by the local farmers' commissions, and if agreement is not reached, or if a dispute arises between the district farmers' commissions of neighbouring districts, the district farmers' commission shall submit the given matter to the regional national committee, which shall forward it together with its standpoint to the Ministry of Agriculture for a final decision.

(7) The Ministry of Agriculture and the regional national committee shall send assistance bodies to district farmers' commissions, where these bodies shall assist in technical allocation work.

## § 10

(1) The proposal for payment shall be drawn up on the basis of profitability, location, distance and state of cultivation of land (fertilisation, sowing and planting) and in accordance with economic and family circumstances of the beneficiary, in the following manner:

a) at least in the value of one average annual yield for the proposed area of the land,

b) in a maximum value of two average annual yields for the proposed area of the land,

c) payment for the allocated buildings shall be determined in the amount of 1 to 3 times the annual rent for the allocated building. The rent may in any case be expressed in kind.

(2) Payment for the allocated livestock, fixtures and fittings and other facilities shall be determined pursuant to guidelines drawn up by regional national committees and approved by the Ministry of Agriculture.

## § 11

(1) The determined payment shall be paid:

1. in a lump-sum, at the latest within 12 months from taking over possession of the allocation, in money or in kind, or

2. in monetary or in-kind instalments, specifically:

a) 10 % of payment for land and appurtenances shall be paid upon takeover of the allocated land. On the basis of a proposal of the local farmers' commission, which shall be submitted already in the allocation plan (§ 9), the National Land Fund may allow deferment of the first instalment for up to three years;

b) the arrears of payment shall be due pursuant to the payment plan, drawn up by the National Land Fund, at the latest within 15 years from the date of acceptance of the allocated property.

(2) In cases deserving special consideration and in socially justified cases, the National Land Fund, on the proposal of farmers' commissions, may waive the payment by the beneficiary and allocate the relevant agricultural property free of charge, particularly to persons who have preferential right to allocation [§ 7 (6)].

### § 12

The beneficiaries shall pay off the payment to the National Land Fund pursuant to the plan issued thereby. The payment shall be used for discharging debts and obligations attached to the confiscated properties, if such debts and obligations are acknowledged and taken over, and, furthermore, for payment of war damage and damage caused to the property of persons persecuted during occupation for national, political and racial reasons, for improving agricultural production and for internal settlement. Any surplus of the National Land Fund shall fall to the State Treasury.

### § 13

(1) The payment determined pursuant to § 10 shall include all expenditures and charges related to confiscation (§ 1), allocation (§ 7) and registered transfer of the confiscated property.

(2) The National Land Fund shall arrange for registration of the allocation in the land register at its own cost.

(3) Transfers of property pursuant to this Decree shall be relieved of charges and levies.

### § 14

This Decree comes into effect in the Czech and Moravian-Silesian regions as of the date of promulgation; it shall be implemented by the Ministers of Agriculture, Finance, Justice, Interior and Nutrition.

**Dr. Beneš**, in his own hand

**Fierlinger**, in his own hand

**Nosek**, in his own hand

**Dr. Stránský**, in his own hand

**Dr. Šrobár**, in his own hand

**Ďuriš**, in his own hand

**Majer**, in his own hand

## Annex 7

# CZECHOSLOVAKIAN DECREE NO. 108 REGARDING THE CONFISCATION OF ENEMY PROPERTY AND THE NATIONAL RECONSTRUCTION FUND OF 25 OCTOBER 1945

## Translation of the Czech Original:

of Part I of the Decree No. 108 regarding the Confiscation of Enemy Property and the National Reconstruction Fund of 25 October 1945

### PART I.

### Confiscation of Enemy Property

§ 1 Scope of confiscated property

(1) Confiscation without compensation shall take effect- as far as this has not been already done - to the benefit of the Czechoslovak Republic in respect of movable and immovable property, including in particular property rights (such as claims, securities, deposits or contributed capital, intangible rights) which were owned as to the day of the actual termination of the German and Hungarian occupation or have, hitherto been owned by the following parties:

1. the German Reich, the Kingdom of Hungary, corporate bodies under German or Hungarian public law, the German Nazi Party, the Hungarian political parties and associations of persons, organisations, companies, institutions, associations, funds and special purpose funds of their regimes or connected with them, or other German or Hungarian legal entities, or

2. natural persons belonging to the German or Hungarian people other than persons who can furnish proof that they remained faithful to the Czechoslovak Republic, have never acted to the detriment of the Czech or Slovak people and either participated actively in the fight for its liberation or suffered under Nazi or Fascist terror, or

3. natural persons who carried out activities aimed against the state sovereignty, independence, integrity, democratic-republican state form, safety and defence of the Czechoslovak Republic, who instigated such activities or strived to seduce other persons, and who intentionally and actively supported by any means the German and Hungarian occupants, or who, at the time of increased danger to the Republic (§ 18 of

Decree of the President of 19 June 1945, No. 16, on punishment of Nazi criminals, traitors and their supporters, and on extraordinary people's courts) supported Germanisation or Hungarisation in the territory of the Czechoslovak Republic or acted in a hostile manner in relation to the Czechoslovak Republic or the Czech or Slovak nations, as well as persons who tolerated such activity of persons managing their property or enterprise.

(2) Provisions of paragraph 1 (3) shall also apply to legal persons, if natural persons who are members thereof or have interest in the property or enterprise (capital participants) can be blamed for the procedure of the body acting on behalf of the legal person or where these persons failed to exercise due diligence in electing such body and supervising its activities.

(3) Confiscation shall also apply to all property that belonged in the period commencing on 29 September 1938 to entities specified in paragraphs 1 and 2 and was in this decisive period pursuant to the first sentence of paragraph 1, or, as the case may be, is still owned by persons, in whose hands they would not be subject to confiscation, unless confiscation of such property would be at variance with the principles of decency.

(4) The competent district national committee shall decide whether the preconditions for confiscation pursuant to this Decree have been fulfilled. The decision may be delivered through a public notice, even if the preconditions under § 33 of the Government Regulation of 13 January 1928, No. 8 Coll., on proceedings in matters falling within the competence of political authorities (administrative proceedings), are not fulfilled. The decision of a district national committee shall be subject to appeal to the regional national committee (in Slovakia, to the competent body of the Slovak National Council). The regional national committee (in Slovakia, the competent body of the Slovak National Council) may, even in the course of proceedings, take over the proceedings and decide on the matter in the first instance. If a regional national committee (in Slovakia, the competent body of the Slovak National Council) makes such a decision in the first instance, its decision shall be subject to appeal to the Ministry of Interior. The Minister of Interior may regulate the manner of decision-making pursuant to this paragraph in more detail in its guidelines.

### Exemptions from Confiscation and Provision of Compensation

(1) Only that part of movable assets of persons specified in § 1 (1) subparagraphs (2) and (3) that is essential for satisfaction of vital necessities or for personal performance of occupation by these persons and their family members (such as clothing, eiderdowns, linen, household tools, food and appliances), shall be exempted from confiscation. The Government shall lay down details of the scope of such property in a regulation.

(2) The Government may lay down in a regulation that property of a certain group of persons falling within the provision of § 1 shall be partly or entirely exempted from confiscation.

(3) Confiscation shall not apply to property, the ownership of which was lost in the period after 29 September 1938, under the pressure of occupation or as a consequence of national, racial or political persecution, by persons who do not fall within the provision of § 1.

(4) Upon confiscation of the property of a legal person, persons that have capital interest therein shall be entitled to proportional compensation, unless these persons fall within the provisions of § 1 (1) and (2). The Government shall lay down details in a regulation.

(5) If persons, whose property is subject to confiscation, are associated as co-owners with persons who do not fall within the provision of § 1, and their co-ownership share is in excess of one half, confiscation shall apply to the entire property. However, persons who do not fall within § 1 shall be entitled to compensation in the same kind and value as their share, and, where this is not possible, in money.

## Annex 8

# LIST OF THE FAMILIES AFFECTED BY THE CONFISCATION MEASURES OF THE THEN CZECHOSLOVAKIAN GOVERNMENT

## List of names

1. von Berg Baronin Hedwig
2. Bloch Dr. Albert
3. Brändle Ida
4. de Charmant Marie
5. de Charmant Pierre
6. von Falz Fein Baronin Antonia
7. von Frankl Maria
8. Hartmann Gerty
9. von Janotta Dorothea
10. von Köngiswarter Baron Johann Alexander
11. von Liechtenstein Prinz Alois
12. von Liechtenstein Fürst Franz Josef
13. von Liechtenstein Prinz Friedrich
14. von Liechtenstein Prinzessin Irma
15. von Liechtenstein Prinz Emanuel
16. von Liechtenstein Prinz Hans
17. von Liechtenstein Prinzessin Ludmilla
18. von Liechtenstein Prinzessin Olga
19. Näscher Francisca
20. Nissl Dr. Hans

21. Nissl Renate

22. Nitsche Günther

23. Nitsche Hug Alfred

24. Nitsche Melanie

25. Nottebohm Harriet

26. Nottebohm Hermann

27. Reitzes-Marienwert Baronin Maria

28. Risch Adolf

29. Schädler Gertrud

30. Schädler Stefanie Marianne

31. Seemann Albin

32. Seemann Peter

33. Strauss Minka

34. Tomola Olga

35. Wanger Anton

36. Weiss Antonie

37. Wilczek Graf Ferdinand

38. Wurmbrand Steppach Gräfin Mignon

## Annex 9

# DECISION OF THE ADMINISTRATIVE COURT IN BRATISLAVA OF 21 NOVEMBER 1951 (REF. NO. GZ 138/46-5)

Translation of the Czech Original

In the name of the Republic!

The Administrative Court, presided by Dr. Plzák and in the presence of judges Dr. Buček, Dr. Ratica, Dr. Satoria, Dr. Česák and the minutes clerk Mr. Tůma, found and decided after the public oral hearing on 6 December 1948, in the hearing in camera on the basis of the administrative acts applied for and having inspected the transfer files of the defendant office, on the appeals filed by Franz Josef II, the reigning Prince of Liechtenstein, represented by the general proxyholder Karl Alfred, prince of Liechtenstein, against the decision of the Regional National Committee in Brno dated 16 January 1946 No. 86/VIII/26-1946 concerning the expropriation of agricultural property, the following:

The appeals are dismissed.

## Reasons:

By the appealed decision in the proceedings of the administrative instances, the Appellant Franz Josef II, Prince of Liechtenstein, was designated as a person belonging to the German people by the defendant office in accordance with Section 1(1) of the Decree No. 12/1945 Coll., so that as a result of promulgation of the said Decree and in accordance with Section 1(1), his agricultural property was confiscated for the purposes of carrying out the land reform in the political districts Mor. Beroun, Boskovice, rural district of Brno, Uherský Brod, Bruntál, Hlučín, Hodonín, Uherské Hradiště, Hustopeče, Krnov, Kyjov, Litovel, Mikulov, rural district of Olomouc, Opava, Prostějov, Rymarov, Šternberk, Šumperk, Moravská Třebová, Vyškov and

Zábřeh, and municipalities stipulated in the individual ordinances of the respective District National Committees.

It was established with respect to the appeals:

The objection that the District Committee in Olomouc was not competent to issue the expropriation decision is unfounded. Expropriation of agricultural property pursuant to the Decree 12/1945 Coll. shall be carried out *ex lege*. The office shall ascertain whether the legal requirements for expropriation are met in respect of the owner of such property. The District National Committee of the district in which the real property is located (Section 7(1) para (1) of the Administrative Code) is competent to establish this. The Decree No. 12/1945 expressly stipulates so in respect of expropriation pursuant to Section 3 of the cited Decree. Both the District National Committee in Olomouc and other District National Committees in whose districts the real property of the Appellants is located were authorised to decide as to whether the Appellant is a person belonging to the German people within the meaning of Section 1 of the cited Decree or not. In the event that several District National Committees are competent, the provisions of Section 7(2) of the Administrative Code shall be followed in order to provide for uniformity of decisions. In accordance with these provisions, where there are several District National Committees, the decision shall be made by the respective District National Committee whereby the proceedings were commenced first. The constitution of local competence by virtue of priority fully complies with the intentions of the Decree No. 12/1945 Coll., aspiring to acceleration of proceedings.

Another objection was the assertion contained in the appeal that the agricultural property concerned in this lawsuit was not owned by the Appellant - as laid down in the family contract that was transformed into the Law No. 15/1893 RG and incorporated in the Law No. 11/1918 Coll., but is owned by the family of Liechtenstein who hold the principal title (crown estate) while the Appellant has no more than a usufructuary title to the mentioned property. However, on the ground that the principal title is held by the family of Liechtenstein as a corporation, its expropriation would only be possible under the conditions of Section 1(1)(c) of the Decree No. 12/1945 Coll. It is specifically mentioned in this objection of the appeal that the question of whether all requirements for expropriation are fulfilled in the present case should not have been assessed in respect of the Appellant who merely had a usufructuary title to the property in question, but in respect of the family of Liechtenstein as the principal owner of the property and as a corporation.

The basic requirement for expropriation pursuant to the Decree No. 12/1945 Coll., however, is the fact that the agricultural property is owned by the person characterised in accordance with the Decree. As already stated by this Court in its decision of 9 April 1947 No. 428/45-5/ (Boh.A 1592/47), the term ownership pursuant to Section 1(1) of the Decree No. 12/1945 Coll. has to be understood as ownership as defined in Chapters II to V of Part 2 of the Civil Code. In its decision of 21 December 1948, No. 734/47-4 (Boh.A 2030/1948) the Administrative Court further stated that registered ownership shall be decisive. This legal opinion is also followed by the defendant office. By the entire contents of this point of objection, the Appellant merely indicates that he is no more than the usufructuary owner of the property concerned; however, neither in the administrative proceedings nor in this appeal, he has never alleged that he was not the registered owner of this property. One cannot assume that the reference made in the appeal to page 131 of the treatise of Sedláček "The legal position of the family of Liechtenstein under Czechoslovakian Law" can be considered as such an allegation, because exactly on this page of the treatise it is stated that the Appellant is entered in the Land Register as the owner.

At this point of the proceedings, where it is clear beyond doubt that the Appellant is the registered owner of the real estate in question and where only the registered ownership can be decisive pursuant to the Decree No. 12/1945 Coll., as was already mentioned above, needless to note that the appeal unreasonably alleges that the requirements for expropriation concerned should not have been examined in respect of the Appellant and, consequently, it is not necessary, either, to deal with that matter on the merits that is emphasised by the complaint in this context, namely that in accordance with the family contract which was codified under No. 15/1893 RG and incorporated in the law No. 11/1918 Coll., the property concerned was in the principal ownership of the Liechtenstein family as a corporation.

On the merits of the case, the defendant office has come to the conclusion that the Appellant is a person belonging to the German people within the meaning of the provisions of Section 1(1)(a) of the Decree No. 12/1945 Coll., on the grounds of the finding that this has been and is of public knowledge here. The defence of the complaint opposing to this finding is restricted to a mere representation that this finding was not supported in the files, while it is added that already due to this defect it would not have been necessary to concern oneself with the details of this finding. However, with respect to such basis of the objection, the appeal is mistaken. Pursuant to Section 48(1) of the Governmental Order No. 8/28 Coll. (Administrative Code) no evidence is required to prove facts that are of public knowledge, and therefore evidence does not even have to be furnished in the administrative files; however, contrary evidence shall be admitted against the finding of the office that a certain fact was of public knowledge. In consequence thereof, the appeal should have raised the objection that this was not a fact of public knowledge and that the Appellant was in a position to contrary evidence, also indicating the way in which he intended to furnish such evidence. However, the appeal pleads neither of these. Consequently, the Administrative Court has had to confirm that the finding of the defendant office that it was of public knowledge that the Appellant belongs to the German people has remained uncontested by the appeal. In view of this factual position, the defects claimed by the appeal could not have a decisive influence on the contents of the decision, and the complaint had to be dismissed for being unreasonable.

In Bratislava, on 21 November 1951

Presiding Judge:

Dr. Plzák m.p.

*(Seal of the Administrative Court in Bratislava)*

Administrative Office of

Administrative Court.

*Identical to original*

*(Signature illegible)*

## Annex 10

# DECLARATION REGARDING THE DEFEAT OF GERMANY AND THE ASSUMPTION OF SUPREME AUTHORITY BY THE ALLIED POWERS OF 5 JUNE 1945

# No. 230. DECLARATION[1] REGARDING THE DEFEAT OF GERMANY AND THE ASSUMPTION OF SUPREME AUTHORITY WITH RESPECT TO GERMANY BY THE GOVERNMENTS OF THE UNITED STATES OF AMERICA, THE UNION OF SOVIET SOCIALIST REPUBLICS AND THE UNITED KINGDOM, AND THE PROVISIONAL GOVERNMENT OF THE FRENCH REPUBLIC. SIGNED AT BERLIN, ON 5 JUNE 1945

The German armed forces on land, at sea and in the air have been completely defeated and have surrendered unconditionally and Germany, which bears responsibility for the war, is no longer capable of resisting the will of the victorious Powers. The unconditional surrender of Germany has thereby been effected, and Germany has become subject to such requirements as may now or hereafter be imposed upon her.

There is no central Government or authority in Germany capable of accepting responsibility for the maintenance of order, the administration of the country and compliance with the requirements of the victorious Powers.

It is in these circumstances necessary, without prejudice to any subsequent decisions that may be taken respecting Germany, to make provision for the cessation of any further hostilities on the part of the German armed forces, for the maintenance of order in Germany and for the administration of the country, and to announce the immediate requirements with which Germany must comply.

The Representatives of the Supreme Commands of the United States of America, the Union of Soviet Socialist Republics, the United Kingdom and the French Republic, hereinafter called the "Allied Representatives," acting by authority of their respective Governments and in the interests of the United Nations, accordingly make the following Declaration:—

The Governments of the United States of America, the Union of Soviet Socialist Republics and the United Kingdom, and the Provisional Government of the French Republic, hereby assume supreme authority with respect to Germany, including all the powers possessed by the German Government, the High Command and any state, municipal, or local government or authority. The assumption, for the purposes stated above, of the said authority and powers does not effect the annexation of Germany.

The Governments of the United States of America, the Union of Soviet Socialist Republics and the United Kingdom, and the Provisional Government of the French Republic, will hereafter determine the boundaries of Germany or any part thereof and the status of Germany or of any area at present being part of German territory.

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[1] Came into force on 5 June 1945, as from the date of signature, in accordance with article 14.

In virtue of the supreme authority and powers thus assumed by the four Governments, the Allied Representatives announce the following requirements arising from the complete defeat and unconditional surrender of Germany with which Germany must comply.

### *Article 1*

Germany, and all German military, naval and air authorities and all forces under German control shall immediately cease hostilities in all theatres of war against the forces of the United Nations on land, at sea and in the air.

### *Article 2*

(*a*) All armed forced of Germany or under German control, wherever they may be situated, including land, air, anti-aircraft and naval forces, the S.S., S.A. and Gestapo, and all other forces or auxiliary organisations equipped with weapons, shall be completely disarmed, handing over their weapons and equipment to local Allied Commanders or to officers destignated by the Allied Representatives.

(*b*) The personnel of the formations and units, of all the forces referred to in paragraph (*a*) above shall, at the discretion of the Commander-in-Chief of the Armed Forces of the Allied State concerned, be declared to be prisoners of war, pending further decisions, and shall be subject to such conditions and directions as may be prescribed by the respective Allied Representatives.

(*c*) All forces referred to in paragraph (*a*) above, wherever they may be, will remain in their present positions pending instructions from the Allied Representatives.

(*d*) Evacuation by the said forces of all territories outside the frontiers of Germany as they existed on the 31st December, 1937, will proceed according to instructions to be given by the Allied Representatives.

(*e*) Detachments of civil police to be armed with small arms only, for the maintenance of order and for guard duties, will be designated by the Allied Representatives.

### *Article 3*

(*a*) All aircraft of any kind or nationality in Germany or German-occupied or controlled territories or waters, military, naval or civil, other than aircraft in the service of the Allies, will remain on the ground, on the water or aboard ships pending further instructions.

(*b*) All German or German-controlled aircraft in or over territories or waters not occupied or controlled by Germany will proceed to Germany or to such other place or places as may be specified by the Allied Representatives.

### *Article 4*

(*a*) All German or German-controlled naval vessels, surface and submarine, auxiliary naval craft, and merchant and other shipping, wherever such vessels may be at the time of this Declaration, and all other merchant ships of whatever nationality in German ports, will remain in or proceed immediately to ports and bases as specified by the Allied Representatives. The crews of such vessels will remain on board pending further instructions.

(*b*) All ships and vessels of the United Nations, whether or not title has been transferred as the result of prize court or other proceedings, which are at the disposal of Germany or under German control at the time of this Declaration, will proceed at the dates and to the ports or bases specified by the Allied Representatives.

### *Article 5*

(*a*) All or any of the following articles in the possession of the German armed forces or under German control or at German disposal will be held intact and in good condition at the disposal of the Allied Representatives, for such purposes and at such times and places as they may prescribe—

(i) all arms, ammunition, explosives, military equipment, stores and supplies and other implements of war of all kinds and all other war material;

(ii) all naval vessels of all classes, both surface and submarine, auxiliary naval craft and all merchant shipping, whether afloat, under repair or construction, built or building;

(iii) all aircraft of all kinds, aviation and anti-aircraft equipment and devices;

(iv) all transportation and communications facilities and equipment, by land, water or air;

(v) all military installations and establishments, including airfields, seaplane bases, ports and naval bases, storage depots, permanent and temporary land and coast fortifications, fortresses and other fortified areas, together with plans and drawings of all such fortifications, installations and establishments;

(vi) all factories, plants, shops, research institutions, laboratories, testing stations, technical data, patents, plans, drawings and inventions, designed or intended to produce or to facilitate the production or use of the articles, materials and facilities referred to in sub-paragraphs (i), (ii), (iii), (iv) and (v) above or otherwise to further the conduct of war.

(*b*) At the demand of the Allied Representatives the following will be furnished:—

(i) the labour, services and plant required for the maintenance or operation of any of the six categories mentioned in paragraph (*a*) above; and

(ii) any information or records that may be required by the Allied Representatives in connection with the same.

(*c*) At the demand of the Allied Representatives all facilities will be provided for the movement of Allied troops and agencies, their equipment and supplies, on the railways, roads and other land communications or by sea, river or air. All means of transportation will be maintained in good order and repair, and the labour, services and plant necessary therefor will be furnished.

### *Article 6*

(*a*) The German authorities will release to the Allied Representatives, in accordance with the procedure to be laid down by them, all prisoners of war at present in their power, belonging to the forces of the United Nations, and will furnish full lists of these persons, indicating the places of their detention in Germany or territory occupied by Germany. Pending the release of such prisoners of war, the German authorities and people will protect them in their persons and property and provide them with adequate food, clothing, shelter, medical attention and money in accordance with their rank or official position.

(*b*) The German authorities and people will in like manner provide for and release all other nationals of the United Nations who are confined, interned or otherwise under restraint, and all other persons who may be confined, interned or otherwise under restraint for political reasons or as a result of any Nazi action, law or regulation which discriminates on the ground of race, colour, creed or political belief.

(*c*) The German authorities will, at the demand of the Allied Representatives, hand over control of places of detention to such officers as may be designated for the purpose by the Allied Representatives.

### *Article 7*

The German authorities concerned will furnish to the Allied Representatives:—

(*a*) full information regarding the forces referred to in Article 2(*a*), and, in particular, will furnish forthwith all information which the Allied Representatives may require concerning the numbers, locations and dispositions of such forces, whether located inside or outside Germany;

(*b*) complete and detailed information concerning mines, minefields and other obstacles to movement by land, sea or air, and the safety lanes in connection therewith. All such safety lanes will be kept open and clearly marked; all mines, minefields and other dangerous obstacles will as far as possible be rendered safe, and all aids to navigation will be reinstated. Unarmed German military and civilian personnel with the necessary equipment will be made available and utilised for the above purposes and for the removal of mines, minefields and other obstacles as directed by the Allied Representatives.

### *Article 8*

There shall be no destruction, removal, concealment, transfer or scuttling of, or damage to, any military, naval, air, shipping, port, industrial and other like property and facilities and all records and archives, wherever they may be situated, except as may be directed by the Allied Representatives.

### *Article 9*

Pending the institution of control by the Allied Representatives over all means of communication, all radio and telecommunication installations and other forms of wire or wireless communications, whether ashore or afloat, under German control, will cease transmission except as directed by the Allied Representatives.

### *Article 10*

The forces [nationals], ships, aircraft, military equipment, and other property in Germany or in German control or service or at German disposal, of any other country at war with any of the Allies, will be subject to the provisions of this Declaration and of any proclamations, orders, ordinances or instructions issued thereunder.

### *Article 11*

(*a*) The principal Nazi leaders as specified by the Allied Representatives, and all persons from time to time named or designated by rank, office or employment by the Allied Representatives as being suspected of having committed, ordered or abetted war crimes or analogous offences, will be apprehended and surrendered to the Allied Representatives.

(*b*) The same will apply in the case of any national or any of the United Nations who is alleged to have committed an offence against his national law, and who may at any time be named or designated by rank, office or employment by the Allied Representatives.

(*c*) The German authorities and people will comply with any instructions given by the Allied Representatives for the apprehension and surrender of such persons.

### *Article 12*

The Allied Representatives will station forces and civil agencies in any or all parts of Germany as they may determine.

### *Article 13*

(*a*) In the exercise of the supreme authority with respect to Germany assumed by the Governments of the United States of America, the Union of Soviet Socialist Republics and the United Kingdom, and the Provisional Government of the French Republic, the four Allied Governments will take such steps, including the complete disarmament and demilitarisation of Germany, as they deem requisite for future peace and security.

(*b*) The Allied Representatives will impose on Germany additional political, administrative, economic, financial, military and other requirements arising from the complete defeat of Germany. The Allied Representatives, or persons or agencies duly designated to act on their authority, will issue proclamations, orders, ordinances and instructions for the purpose of laying down such additional requirements, and of giving effect to the other provisions of this Declaration. All German authorities and the German people shall carry out unconditionally the requirements of the Allied Representatives, and shall fully comply with all such proclamations, orders, ordinances and instructions.

### *Article 14*

This Declaration enters into force and effect at the date and hour set forth below. In the event of failure on the part of the German authorities or people promptly and completely to fulfil their obligations hereby or hereafter imposed, the Allied Representatives will take whatever action may be deemed by them to be appropriate under the circumstances.

### *Article 15*

This Declaration is drawn up in the English, Russian, French and German languages. The English, Russian and French are the only authentic texts.

5 June 1945, Berlin

. . . Hours, Central European Time

The word "nationals"[2] has been omitted pending check.

Signed by the Allied Representatives:

| | |
|---|---|
| Dwight D. EISENHOWER | General of the Army, U.S.A. |
| G. ZHUKOV | |
| B. L. MONTGOMERY | Field-Marshal |
| F. DE LATTRE-TASSIGNY | Général d'Armée |

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[1] The Permanent Representative of the United States of America to the United Nations informed the Secretary-General of the United Nations that the German text was not included in the certified copy of the Declaration transmitted for filing and recording since it was neither designated as an authentic text, nor signed by the contracting parties, nor was it otherwise executed by them as an official text or an integral part of the Declaration. Accordingly the German text of the Declaration is not reproduced herein.

[2] See article 10, page 199.

## Annex 11

# PROTOCOL OF THE PROCEEDINGS OF THE CRIMEA CONFERENCE OF 11 FEBRUARY 1945 (YALTA PROTOCOL)

Miscellaneous No. 7 (1947)

# Protocol
# of the Proceedings of the Crimea Conference

Yalta, 11th February, 1945

*Presented by the Secretary of State for Foreign Affairs*
*to Parliament by Command of His Majesty*

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# PROTOCOL OF THE PROCEEDINGS OF THE CRIMEA CONFERENCE

*Yalta, 11th February, 1945*

THE Crimea Conference of the Heads of the Governments of the United States of America, the United Kingdom, and the Union of Soviet Socialist Republics, which took place from the 4th-11th February, came to the following conclusions:—

## I.—World Organisation

It was decided:

(1) That a United Nations Conference on the proposed World Organisation should be summoned for Wednesday, the 25th April, 1945, and should be held in the United States of America.

(2) The nations to be invited to this Conference should be:

(*a*) the United Nations as they existed on the 8th February, 1945; and

(*b*) such of the Associated Nations as have declared war on the common enemy by the 1st March, 1945. (For this purpose by the term "Associated Nations" was meant the eight Associated Nations and Turkey.)

When the Conference on World Organisation is held, the delegates of the United Kingdom and United States of America will support a proposal to admit to original membership two Soviet Socialist Republics, *i.e.*, the Ukraine and White Russia.

(3) That the United States Government on behalf of the Three Powers should consult the Government of China and the French Provisional Government in regard to the decisions taken at the present Conference concerning the proposed World Organisation.

(4) That the text of the invitation to be issued to all the nations which would take part in the United Nations Conference should be as follows:—

### INVITATION

"The Government of the United States of America, on behalf of itself and of the Governments of the United Kingdom, the Union of Soviet Socialist Republics, and the Republic of China and of the Provisional Government of the French Republic, invite the Government of to send representatives to a Conference of the United Nations to be held on the 25th April, 1945, or soon thereafter, at San Francisco in the United States of America to prepare a Charter for a General International Organisation for the maintenance of international peace and security.

"The above-named Governments suggest that the Conference consider as affording a basis for such a Charter the Proposals for the Establishment of a General International Organisation, which were made public last October as a result of the Dumbarton Oaks Conference,(¹) and which have now been supplemented by the following provisions for Section C of Chapter VI:—

" 'C. *Voting*

'1. Each member of the Security Council should have one vote.

'2. Decisions of the Security Council on procedural matters should be made by an affirmative vote of seven members.

'3. Decisions of the Security Council on all other matters should be made by an affirmative vote of seven members, including the concurring votes of the permanent members; provided that, in decisions under Chapter VIII, Section A, and under the second sentence of paragraph 1 of Chapter VIII, Section C, a party to a dispute should abstain from voting.'

" Further information as to arrangements will be transmitted subsequently.

" In the event that the Government of desires in advance of the Conference to present views or comments concerning the proposals, the Government of the United States of America will be pleased to transmit such views and comments to the other participating Governments."

*Territorial Trusteeship*

It was agreed that the five Nations which will have permanent seats on the Security Council should consult each other prior to the United Nations Conference on the question of territorial trusteeship.

The acceptance of this recommendation is subject to its being made clear that territorial trusteeship will only apply to (*a*) existing mandates of the League of Nations; (*b*) territories detached from the enemy as a result of the present war; (*c*) any other territory which might voluntarily be placed under trusteeship; and (*d*) no discussion of actual territories is contemplated at the forthcoming United Nations Conference or in the preliminary consultations, and it will be a matter for subsequent agreement which territories within the above categories will be placed under trusteeship.

## II.—Declaration on Liberated Europe

The following declaration has been approved:—

" The Premier of the Union of Soviet Socialist Republics, the Prime Minister of the United Kingdom and the President of the United States of America have consulted with each other in the common interests of the peoples of their countries and those of liberated Europe. They jointly declare their mutual agreement to concert during the temporary period of instability in liberated Europe the policies of their three Governments in assisting the peoples liberated from the domination of Nazi Germany and the peoples of the former Axis satellite States of Europe to solve by democratic means their pressing political and economic problems.

" The establishment of order in Europe and the rebuilding of national economic life must be achieved by processes which will enable the liberated peoples to destroy the last vestiges of Nazism and Fascism, and to create democratic institutions of their own choice. This is a principle of the

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(¹) " Miscellaneous No. 4 (1944)," Cmd. 6560.

Atlantic Charter(²)—the right of all peoples to choose the form of government under which they will live—the restoration of sovereign rights and self-government to those peoples who have been forcibly deprived of them by the aggressor nations.

"To foster the conditions in which the liberated peoples may exercise these rights, the three Governments will jointly assist the people in any European liberated State or former Axis satellite State in Europe where in their judgment conditions require (*a*) to establish conditions of internal peace; (*b*) to carry out emergency measures for the relief of distressed peoples; (*c*) to form interim governmental authorities broadly representative of all democratic elements in the population and pledged to the earliest possible establishment through free elections of Governments responsive to the will of the people; and (*d*) to facilitate where necessary the holding of such elections.

"The three Governments will consult the other United Nations and provisional authorities or other Governments in Europe when matters of direct interest to them are under consideration.

"When, in the opinion of the three Governments, conditions in any European liberated State or any former Axis satellite State in Europe make such action necessary, they will immediately consult together on the measures necessary to discharge the joint responsibilities set forth in this declaration.

"By this declaration we reaffirm our faith in the principles of the Altantic Charter, our pledge in the Declaration by the United Nations, and our determination to build in co-operation with other peace-loving nations world order under law, dedicated to peace, security, freedom and general well-being of all mankind.

"In issuing this declaration, the Three Powers express the hope that the Provisional Government of the French Republic may be associated with them in the procedure suggested."

### III.—Dismemberment of Germany

It was agreed that Article 12 (*a*) of the Surrender Terms for Germany should be amended to read as follows:—

> "The United Kingdom, the United States of America and Union of Soviet Socialist Republics shall possess supreme authority with respect to Germany. In the exercise of such authority they will take such steps, including the complete disarmament, demilitarisation and the dismemberment of Germany as they deem requisite for future peace and security."

The study of the procedure for the dismemberment of Germany was referred to a Committee, consisting of Mr. Eden (Chairman), Mr. Winant and M. Gousev. This body would consider the desirability of associating with it a French representative.

### IV.—Zone of Occupation for the French and Control Commission for Germany

It was agreed that a zone in Germany, to be occupied by the French Forces, should be allocated to France. This zone would be formed out of the British and American zones and its extent would be settled by the British and Americans in consultation with the French Provisional Government.

It was also agreed that the French Provisional Government should be invited to become a member of the Allied Control Commission for Germany

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(²) "Treaty Series No. 5 (1942)," Cmd. 6388.

## V.—Reparation

The following Protocol has been approved:—

### PROTOCOL

*Conversations between the Heads of the three Governments at the Crimea Conference on the question of reparation in kind from Germany*

The Heads of the three Governments have agreed as follows:—

1. Germany must pay in kind for the losses caused by her to the Allied nations in the course of the war. Reparations are to be received in the first instance by those countries which have borne the main burden of the war, have suffered the heaviest losses and have organised victory over the enemy.

2. Reparation in kind is to be exacted from Germany in three following forms:—

(*a*) Removals within two years from the surrender of Germany or the cessation of organised resistance from the national wealth of Germany located on the territory of Germany herself as well as outside her territory (equipment, machine-tools, ships, rolling-stock, German investments abroad, shares of industrial, transport and other enterprises in Germany, &c.), these removals to be carried out chiefly for purpose of destroying the war potential of Germany.

(*b*) Annual deliveries of goods from current production for a period to be fixed.

(*c*) Use of German labour.

3. For the working out on the above principles of a detailed plan for exaction of reparation from Germany an Allied Reparation Commission will be set up in Moscow. It will consist of three representatives—one from the Union of Soviet Socialist Republics, one from the United Kingdom and one from the United States of America.

4. With regard to the fixing of the total sum of the reparation as well as the distribution of it among the countries which suffered from the German aggression the Soviet and American delegations agreed as follows:—

> "The Moscow Reparation Commission should take in its initial studies as a basis for discussion the suggestion of the Soviet Government that the total sum of the reparation in accordance with the points (*a*) and (*b*) of the paragraph 2 should be 20 billion dollars and that 50 per cent. of it should go to the Union of Soviet Socialist Republics."

The British delegation was of the opinion that pending consideration of the reparation question by the Moscow Reparation Commission no figures of reparation should be mentioned.

The above Soviet-American proposal has been passed to the Moscow Reparation Commission as one of the proposals to be considered by the Commission.

## VI.—Major War Criminals

The Conference agreed that the question of the major war criminals should be the subject of enquiry by the three Foreign Secretaries for report in due course after the close of the Conference.

**VII.—Poland**

The following Declaration on Poland was agreed by the Conference:—

"A new situation has been created in Poland as a result of her complete liberation by the Red Army. This calls for the establishment of a Polish Provisional Government which can be more broadly based than was possible before the recent liberation of the Western part of Poland. The Provisional Government which is now functioning in Poland should therefore be reorganised on a broader democratic basis with the inclusion of democratic leaders from Poland itself and from Poles abroad. This new Government should then be called the Polish Provisional Government of National Unity.

"M. Molotov, Mr. Harriman and Sir A. Clark Kerr are authorised as a Commission to consult in the first instance in Moscow with members of the present Provisional Government and with other Polish democratic leaders from within Poland and from abroad, with a view to the reorganisation of the present Government along the above lines. This Polish Provisional Government of National Unity shall be pledged to the holding of free and unfettered elections as soon as possible on the basis of universal suffrage and secret ballot. In these elections all democratic and anti-Nazi parties shall have the right to take part and to put forward candidates.

"When a Polish Provisional Government of National Unity has been properly formed in conformity with the above, the Government of the U.S.S.R., which now maintains diplomatic relations with the present Provisional Government of Poland, and the Government of the United Kingdom and the Government of the U.S.A. will establish diplomatic relations with the new Polish Provisional Government of National Unity, and will exchange Ambassadors by whose reports the respective Governments will be kept informed about the situation in Poland.

"The three Heads of Government consider that the Eastern frontier of Poland should follow the Curzon Line with digressions from it in some regions of 5 to 8 kilometres in favour of Poland. They recognise that Poland must receive substantial accessions of territory in the North and West. They feel that the opinion of the new Polish Provisional Government of National Unity should be sought in due course on the extent of these accessions and that the final delimitation of the Western frontier of Poland should thereafter await the Peace Conference."

**VIII.—Yugoslavia**

It was agreed to recommend to Marshal Tito and to Dr. Subasić:

(a) That the Tito–Subasić Agreement should immediately be put into effect and a new Government formed on the basis of the Agreement.

(b) That as soon as the new Government has been formed it should declare:

  (i) that the Anti-Fascist Assembly of National Liberation (Avnoj) will be extended to include members of the last Yugoslav Skupshtina who have not compromised themselves by collaboration with the enemy, thus forming a body to be known as a temporary Parliament, and

  (ii) that legislative acts passed by the Anti-Fascist Assembly of National Liberation (Avnoj) will be subject to subsequent ratification by a Constituent Assembly;

and that this statement should be published in the communiqué of the Conference.

### IX.—Italo-Yugoslav Frontier
### Italo-Austrian Frontier

Notes on these subjects were put in by the British delegation and the American and Soviet delegations agreed to consider them and give their views later.

### X.—Yugoslav-Bulgarian Relations

There was an exchange of views between the Foreign Secretaries on the question of the desirability of a Yugoslav-Bulgarian pact of alliance. The question at issue was whether a State still under an armistice régime could be allowed to enter into a treaty with another State. Mr. Eden suggested that the Bulgarian and Yugoslav Governments should be informed that this could not be approved. Mr. Stettinius suggested that the British and American Ambassadors should discuss the matter further with M. Molotov in Moscow. M. Molotov agreed with the proposal of Mr. Stettinius.

### XI.—South-Eastern Europe

The British Delegation put in notes for the consideration of their colleagues on the following subjects:—

- (*a*) The Control Commission in Bulgaria.
- (*b*) Greek claims upon Bulgaria, more particularly with reference to reparations.
- (*c*) Oil equipment in Roumania.

### XII.—Persia

Mr. Eden, Mr. Stettinius, and M. Molotov exchanged views on the situation in Persia. It was agreed that this matter should be pursued through the diplomatic channel.

### XIII.—Meetings of the Three Foreign Secretaries

The Conference agreed that permanent machinery should be set up for consultation between the three Foreign Secretaries; they should meet as often as necessary probably about every three or four months.

These meetings will be held in rotation in the three capitals, the first meeting being held in London.

### XIV.—The Montreux Convention and the Straits

It was agreed that at the next meeting of the three Foreign Secretaries to be held in London, they should consider proposals which it was understood the Soviet Government would put forward in relation to the Montreux Convention(*) and report to their Governments. The Turkish Government should be informed at the appropriate moment.

The foregoing Protocol was approved and signed by the three Foreign Secretaries at the Crimea Conference, 11th February, 1945.

E. R. STETTINIUS, Jr.
V. MOLOTOV.
ANTHONY EDEN.

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(*) "Treaty Series No. 30 (1937)," Cmd. 5551.

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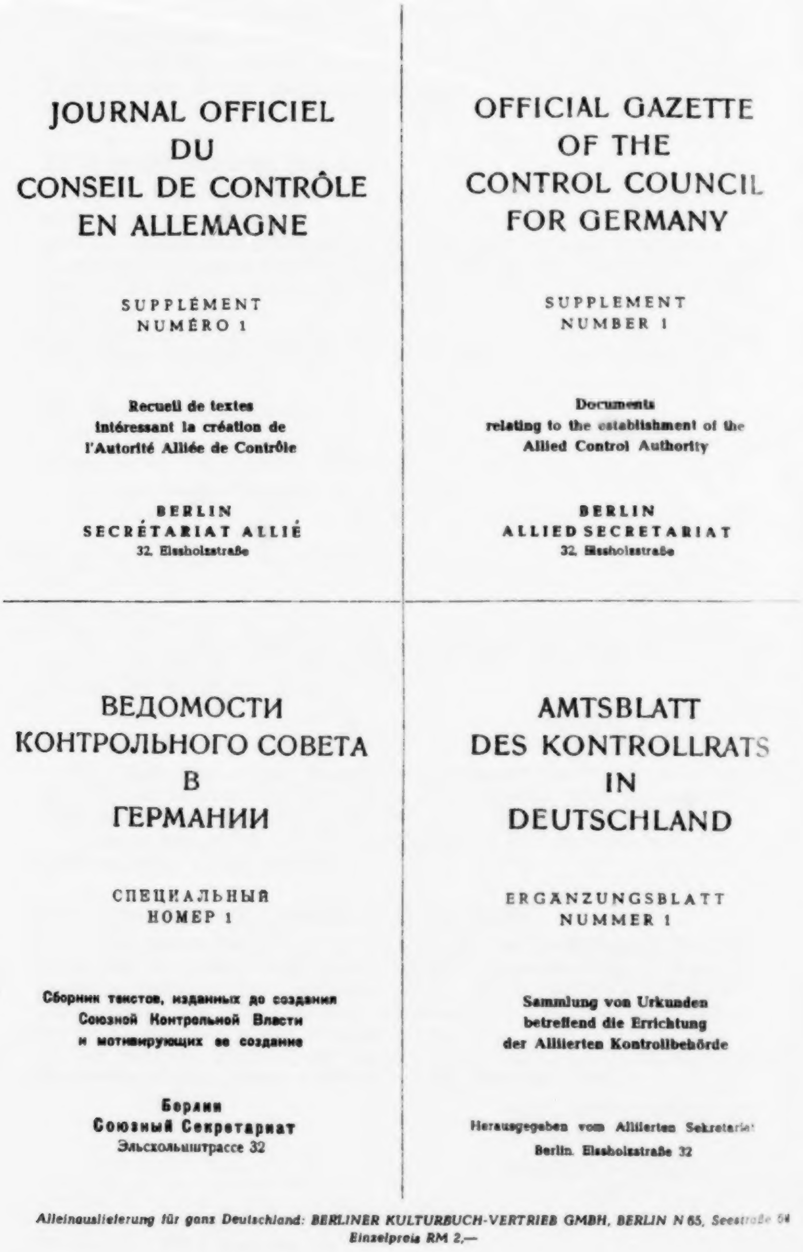
## Annex 12

# REPORT ON THE TRIPARTITE CONFERENCE OF BERLIN OF 2 AUGUST 1945 (POTSDAM PROTOCOL)



# JOURNAL OFFICIEL DU CONSEIL DE CONTRÔLE EN ALLEMAGNE

SUPPLÉMENT
NUMÉRO 1

**Recueil de textes
intéressant la création de
l'Autorité Alliée de Contrôle**

**BERLIN
SECRÉTARIAT ALLIÉ
32, Elssholzstraße**

# OFFICIAL GAZETTE OF THE CONTROL COUNCIL FOR GERMANY

SUPPLEMENT
NUMBER 1

**Documents
relating to the establishment of the
Allied Control Authority**

**BERLIN
ALLIED SECRETARIAT
32, Elssholzstraße**

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# ВЕДОМОСТИ КОНТРОЛЬНОГО СОВЕТА В ГЕРМАНИИ

СПЕЦИАЛЬНЫЙ
НОМЕР 1

**Сборник текстов, изданных до создания
Союзной Контрольной Власти
и мотивирующих ее создание**

**Берлин
Союзный Секретариат**
Эльсхольцштрассе 32

# AMTSBLATT DES KONTROLLRATS IN DEUTSCHLAND

ERGÄNZUNGSBLATT
NUMMER 1

**Sammlung von Urkunden
betreffend die Errichtung
der Alliierten Kontrollbehörde**

**Herausgegeben vom Alliierten Sekretariat
Berlin, Elssholzstraße 32**

***Alleinauslieferung für ganz Deutschland: BERLINER KULTURBUCH-VERTRIEB GMBH, BERLIN N 65, Seestraße 58
Einzelpreis RM 2,—***

# OFFICIAL GAZETTE OF THE CONTROL COUNCIL FOR GERMANY

SUPPLEMENT
NUMBER 1

DOCUMENTS
RELATING TO THE ESTABLISHMENT OF THE
ALLIED CONTROL AUTHORITY

BERLIN
ALLIED SECRETARIAT
32 ELSSHOLZSTRASSE

# OFFICIAL GAZETTE OF THE CONTROL COUNCIL FOR GERMANY

SUPPLEMENT
NUMBER 1

## DOCUMENTS RELATING TO THE ESTABLISHMENT OF THE ALLIED CONTROL AUTHORITY

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### CONTENTS

Page

I. Inter-Allied Declaration against Acts of Dispossession committed in Territories under Enemy Occupation or Control, on the 5th of January 1943 in London . . . . . . . . . . . . . 3

II. Crimea Conference Communique (February 3-11, 1945) signed by Winston S. Churchill, Franklin D. Roosevelt, J. V. Stalin . . . 4

III. Act of Military Surrender, signed at Berlin, by v. Friedeburg, Keitel and Stumpff, on the 8th of May 1945 . . . . . . . . . 6

IV. Declaration regarding the defeat of Germany and the assumption of supreme authority with respect to Germany by the Governments of the United Kingdom, the United States of America and the Union of Soviet Socialist Republics and the Provisional Government of the French Republic signed by the Allied Representatives, on the 5th of June 1945 . . . . . . . . . . . . 7

V. Statement by the Governments of the United Kingdom, the United States of America and the Union of Soviet Socialist Republics and the Provisional Government of the French Republic on control machinery in Germany, on the 5th of June 1945 . . . . 10

VI. Statement by the Governments of the United Kingdom, the United States of America and the Union of Soviet Socialist Republics and the Provisional Government of the French Republic on the zones of occupation in Germany, on the 5th of June 1945 . . . 11

VII. Statement by the Governments of the United Kindom, the United States of America and the Union of Soviet Socialist Republics and the Provisional Government of the French Republic on consultation with the Governments of other United Nations, on the 5th of June 1945 . . . . . . . . . . . . . . . . 12

VIII. Report on the Tripartite Conference of Berlin, signed by J. V. Stalin, Harry S. Truman and C. R. Attlee, on the 2nd of August 1945 . . 13

# Report on the Tripartite Conference of Berlin

## I.

On July 17, 1945, the President of the United States of America, Harry S. Truman, the Chairman of the Council of People's Commissars of the Union of Soviet Socialist Republics, Generalissimo J. V. Stalin, and the Prime Minister of Great Britain, Winston S. Churchill, together with Mr. Clement R. Attlee, met in the Tripartite Conference of Berlin. They were accompanied by the foreign secretaries of the three Governments, Mr. James F. Byrnes, Mr. V. H. Molotov, and Mr. Anthony Eden, the Chiefs of Staff, and other advisers.

There were nine meetings between July 17 and July 25. The Conference was then interrupted for two days while the results of the British general election were being declared.

On July 28 Mr. Attlee returned to the Conference as Prime Minister, accompanied by the new Secretary of State for Foreign Affairs, Mr. Ernest Bevin. Four days of further discussion then took place. During the course of the Conference there were regular meetings of the Heads of the Three Governments accompanied by the foreign secretaries, and also of the Foreign Secretaries alone. Committees appointed by the Foreign Secretaries for preliminary consideration of questions before the Conference also met daily.

The meetings of the Conference were held at the Cecilienhof near Potsdam. The Conference ended on August 2, 1945.

Important decisions and agreements were reached. Views were exchanged on a number of other questions and consideration of these matters will be continued by the Council of Foreign Ministers established by the Conference.

President Truman, Generalissimo Stalin and Prime Minister Attlee leave this Conference, which has strengthened the ties between the three governments and extended the scope of their collaboration and understanding, with renewed confidence that their governments and peoples, together with the other United Nations, will ensure the creation of a just and enduring peace.

## II.

## ESTABLISHMENT OF A COUNCIL OF FOREIGN MINISTERS

The Conference reached an agreement for the establishment of a Council of Foreign Ministers representing the five principal Powers to continue the necessary preparatory work for the peace settlements and to take up other matters which from time to time may be referred to the Council by agreement of the Governments participating in the Council.

The text of the agreement for the establishment of the Council of Foreign Ministers is as follows:—

1. There shall be established a Council composed of the Foreign Ministers of the United Kingdom, the Union of Soviet Socialist Republics, China, France and the United States.

2. I. The Council shall normally meet in London which shall be the permanent seat of the joint Secretariat which the Council will form. Each of the Foreign Ministers will be accompanied by a high-ranking Deputy, duly authorised to carry on the work of the Council in the absence of his Foreign Minister, and by a small staff of technical advisers.

II. The first meeting of the Council shall be held in London not later than 1st September, 1945. Meetings may be held by common agreement in other capitals as may be agreed from time to time.

I. As its immediate important task, the Council shall be authorised to draw up, with a view to their submission to the United Nations, treaties of peace with Italy, Rumania, Bulgaria, Hungary and Finland, and to propose settlements of territorial questions outstanding on the termination of the war in Europe. The Council shall be utilised for the preparation of a peace settlement for Germany to be accepted by the Government of Germany when a Government adequate for the purpose is established.

For the discharge of each of these tasks the Council will be composed of the Members representing those States which were signatory to the terms of surrender imposed upon the enemy State concerned. For the purpose of the peace settlement for Italy, France shall be regarded as a signatory to the terms of surrender for Italy. Other Members will be invited to participate when matters directly concerning them are under discussion.

III. Other matters may from time to time be referred to the Council by agreement between the Member Governments.

4. I. Whenever the Council is considering a question of direct interest to a State not represented thereon, such State should be invited to send representatives to participate in the discussion and study of that question.

II. The Council may adapt its procedure to the particular problem under consideration. In some cases it may hold its own preliminary discussions prior to the participation of other interested States. In other cases the Council may convoke a formal Conference of the State chiefly interested in seeking a solution of the particular problem.

In accordance with the decision of the Conference the three Governments have each addressed an identical invitation to the Governments of China and France to adopt this text and to join in establishing the Council.

The establishment of the Council of Foreign Ministers for the specific purposes named in the text will be without prejudice to the agreement of the Crimea Conference that there should be periodic consultation among the Foreign Secretaries of the United States, the Union of Soviet Socialist Republics and the United Kingdom.

The Conference also considered the position of the European Advisory Commission in the light of the agreement to establish the Council of Foreign Ministers. It was noted with satisfaction that the Commission had ably discharged its principal tasks by the recommendations that it had furnished for the terms of Germany's unconditional surrender, for the zones of occupation in Germany and Austria, and for the inter-Allied control machinery in those countries. It was felt that further work of a detailed character for the co-ordination of Allied policy for the control of Germany and Austria would in future fall within the competence of the Allied Control Council at Berlin and the Allied Commission at Vienna. Accordingly it was agreed to recommend that the European Advisory Commission be dissolved.

## III.

## GERMANY

The Allied armies are in occupation of the whole of Germany and the German people have begun to atone for the terrible crimes committed under the leadership of those whom, in the hour of their success, they openly approved and blindly obeyed.

Agreement has been reached at this Conference on the political and economic principles of a coordinated Allied policy toward defeated Germany during the period of Allied control.

The purpose of this agreement is to carry out the Crimea declaration on Germany. German militarism and Nazism will be extirpated and the Allies will take in agreement together, now and in the future, the other measures necessary to assure that Germany never again will threaten her neighbors or the peace of the world.

It is not the intention of the Allies to destroy or enslave the German people. It is the intention of the Allies that the German people be given the opportunity to prepare for the eventual reconstruction of their life on a democratic and peaceful basis. If their own efforts are steadily directed to this end, it will be possible for them in due course to take their place among the free and peaceful peoples of the world.

The text of the agreement is as follows:

### THE POLITICAL AND ECONOMIC PRINCIPLES TO GOVERN THE TREATMENT OF GERMANY IN THE INITIAL CONTROL PERIOD

### A. Political Principles

1. In accordance with the Agreement on Control Machinery in Germany, supreme authority in Germany is excercised, on instructions from their respective Governments, by the Commanders-in-Chief of the armed forces of the United States of America, the United Kingdom, the Union of Soviet Socialist Republics, and the French Republic, each in his own zone of occupation, and also jointly, in matters affecting Germany as a whole, in their capacity as members of the Control Council.

2. So far as is practicable, there shall be uniformity of treatment of the German population throughout Germany.

3. The purposes of the occupation of Germany by which the Control Council shall be guided are:

I. The complete disarmament and demilitarization of Germany and the elimination or control of all German industry that could be used for military production. To these ends:

*a)* All German land, naval and air forces, the S.S., S.A., S.D. and Gestapo, with all their organizations, staffs and institutions, including the General Staff, the Officers' Corps, Reserve Corps, military schools, war veterans' organizations and all other military and quasimilitary organizations, together with all clubs and associations which serve to keep alive the military tradition in Germany, shall be completely and finally abolished in such manner as permanently to prevent the revival or reorganization of German militarism and Nazism.

*b)* All arms, ammunition and implements of war and all specialized facilities for their production shall be held at the disposal of the Allies or destroyed. The maintenance and production of all aircraft and all arms, ammunition and implements of war shall be prevented.

II. To convince the German people that they have suffered a total military defeat and that they cannot escape responsibility for what they have brought upon themselves, since their own ruthless warfare and the fanatical Nazi resistance have destroyed German economy and made chaos and suffering inevitable.

III. To destroy the National Socialist Party and its affiliated and supervised organizations, to dissolve all Nazi institutions, to ensure that they are not revived in any form, and to prevent all Nazi and militarist activity or propaganda.

IV. To prepare for the eventual reconstruction of German political life on a democratic basis and for eventual peaceful cooperation in international life by Germany.

4. All Nazi laws which provided the basis of the Hitler regime or established discrimination on grounds of race, creed, or political opinion shall be abolished. No such discriminations, whether legal, administrative or otherwise, shall be tolerated.

5. War Criminals and those who have participated in planning or carrying out Nazi enterprises involving or resulting in atrocities or war crimes shall be arrested and brought to judgment. Nazi leaders, influential Nazi supporters and high officials of Nazi organizations and institutions and any other persons dangerous to the occupation or its objectives shall be arrested and interned.

6. All members of the Nazi Party who have been more than nominal participants in its activities and

be removed from public and semi-public office, and from positions of responsibility in important private undertakings. Such persons shall be replaced by persons who, by their political and moral qualities, are deemed capable of assisting in developing genuine democratic institutions in Germany.

7. German education shall be so controlled as completely to eliminate Nazi and militarist doctrines and to make possible the successful development of democratic ideas.

8. The judicial system will be reorganized in accordance with the principles of democracy, of justice under law, and of equal rights for all citizens without distinction of race, nationality or religion.

9. The administration of affairs in Germany should be directed towards the decentralization of the political structure and the development of local responsibility. To this end:

I. local self-government shall be restored throughout Germany on democratic principles and in particular through elective councils as rapidly as is consistent with military security and the purposes of military occupation.

II. all democratic political parties with rights of assembly and of public discussion shall be allowed and encouraged throughout Germany;

III. representative and elective principles shall be introduced into regional, provincial and state (Land) administration as rapidly as may be justified by the successful application of these principles in local selfgovernment;

IV. for the time being no central German government shall be established. Notwithstanding this, however, certain essential central German administrative departments, headed by State Secretaries, shall be established, particularly in the fields of finance, transport, communications, foreign trade and industry. Such departments will act under the direction of the Control Council.

10. Subject to the necessity for maintaining military security, freedom of speech, press and religion shall be permitted, and religious institutions shall be respected. Subject likewise to the maintenance of military security, the formation of free trade unions shall be permitted.

### B. Economic Principles

11. In order to eliminate Germany's war potential the production of arms, ammunition and implements of war as well as all types of aircraft and sea-going ships shall be prohibited and prevented. Production of metals, chemicals, machinery and other items that are directly necessary to a war economy shall be rigidly controlled and restricted to Germany's approved post-war peacetime needs to meet the objectives stated in Paragraph 15. Productive capacity not needed for permitted production shall be removed in accordance with the reparations plan recommended by the Allied Commission on Reparations and approved by the Governments concerned or if not removed shall be destroyed.

12. At the earliest practicable date, the German economy shall be decentralized for the purpose of eliminating the present excessive concentration of economic powers as exemplified in particular by cartels, syndicates, trusts and other monopolistic arrangements.

13. In organizing the German economy, primary emphasis shall be given to the development of agriculture and peaceful domestic industries.

14. During the period of occupation Germany shall be treated as a single economic unit. To this end common policies shall be established in regard to:

*a)* mining and industrial production and allocation;

*b)* agriculture, forestry and fishing;

*c)* wages, prices and rationing;

*d)* import and export programs for Germany as a whole;

*e)* currency and banking, central taxation and customs;

*f)* reparation and removal of industrial war potential;

*g)* transportation and communications.

In applying these policies account shall be taken, where appropriate, of varying local conditions.

15. Allied controls shall be imposed upon the German economy but only to the extent necessary:

*a)* to carry out programs of industrial disarmament and demilitarization, of reparations, and of approved exports and imports;

*b)* to assure the production and maintenance of goods and services required to meet the needs of the occupying forces and displaced persons in Germany and essential to maintain in Germany average living standards not exceeding the average of standards of living of European countries. (European countries means all European countries excluding the United Kingdom and the Union of Soviet Socialist Republics);

*c)* to ensure in the manner determined by the Control Council the equitable distribution of essential commodities between the several zones so as to produce a balanced economy throughout Germany and reduce the need for imports;

*d)* to control German industry and all economic and financial international transactions, including exports and imports, with the aim of preventing Germany from developing a war potential and of achieving the other objectives named herein;

*e)* to control all German public or private scientific bodies, research and experimental institutions, laboratories, et cetera, connected with economic activities.

16. In the imposition and maintenance of economic controls established by the Control Council, German administrative machinery shall be created and the German authorities shall be required to the fullest extent practicable to proclaim and assume administration of such controls. Thus it should be brought home to the German people that the responsibility for the administration of such controls and any breakdown in these controls

will rest with themselves. Any German controls which may run counter to the objectives of occupation will be prohibited.

17. Measures shall be promptly taken:

*a)* to effect essential repair of transport;

*b)* to enlarge coal production;

*c)* to maximize agricultural output; and

*d)* to effect emergency repair of housing and essential utilities.

18. Appropriate steps shall be taken by the Control Council to exercise control and the power of disposition over German-owned external assets not already under the control of United Nations which have taken part in the war against Germany.

19. Payment of Reparations should leave enough resources to enable the German people to subsist without external assistance. In working out the economic balance of Germany the necessary means must be provided to pay for imports approved by the Control Council in Germany. The proceeds of exports from current production and stock shall be available in the first place for payment for such imports.

The above clause will not apply to the equipment and products referred to in paragraphs 4 a) and 4 b) of the Reparations Agreement.

## IV.

## REPARATIONS FROM GERMANY

In accordance with the Crimea decision that Germany be compelled to compensate to the greatest possible extent for the loss and suffering that she has caused to the United Nations and for which the German people cannot escape responsibility, the following agreement on reparations was reached:

1. Reparation claims of the U.S.S.R. shall be met by removals from the zone of Germany occupied by the U.S.S.R. and from appropriate German external assets.

2. The U.S.S.R. undertakes to settle the reparation claims of Poland from its own share of reparations.

3. The reparation claims of the United States, the United Kingdom and other countries entitled to reparations shall be met from the Western Zones and from appropriate German external assets.

4. In addition to the reparations to be taken by the U.S.S.R. from its own zone of occupation, the U.S.S.R. shall receive additionally from the Western Zones:

*a)* 15 per cent of such usable and complete industrial capital equipment, in the first place from the metallurgical, chemical and machine manufacturing industries, as is unnecessary for the German peace economy and should be removed from the Western Zones of Germany, in exchange for an equivalent value of food, coal, potash, zinc, timber, clay products, petroleum products and other commodities as may be agreed upon.

*b)* 10 per cent of such industrial capital equipment as is unnecessary for the German peace economy and should be removed from the Western Zones, to be transferred to the Soviet Government on reparations account without payment or exchange of any kind in return.

Removals of equipment as provided in *a)* and *b)* above shall be made simultaneously.

5. The amount of equipment to be removed from the Western Zones on account of reparations must be determined within six months from now at the latest.

6. Removals on industrial capital equipment shall begin as soon as possible and shall be completed within two years from the determination specified in paragraph 5. The delivery of products covered by 4 *a)* above shall begin as soon as possible and shall be made by the U.S.S.R. in agreed installments within five years of the date hereof. The determination of the amount and character of the industrial capital equipment unnecessary for the German peace economy and therefore available for reparations shall be made by the Control Council under policies fixed by the Allied Commission on Reparations, with the participation of France, subject to the final approval of the Zone Commander in the Zone from which the equipment is to be removed.

7. Prior to the fixing of the total amount of equipment subject to removal, advance deliveries shall be made in respect of such equipment as will be determined to be eligible for delivery in accordance with the procedure set forth in the last sentence of paragraph 6.

8. The Soviet Government renounces all claims in respect of reparations to shares of German enterprises which are located in the Western Zones of occupation in Germany as well as to German foreign assets in all countries except those specified in paragraph 9 below.

9. The Governments of the U.K. and the U.S.A. renounce their claims in respect of reparations to shares of German enterprises which are located in the Eastern Zone of occupation in Germany, as well as to German foreign assets in Bulgaria, Finland, Hungary, Rumania, and Eastern Austria.

10. The Soviet Government makes no claims to gold captured by the Allied troops in Germany.

## V

## DISPOSAL OF THE GERMAN NAVY AND MERCHANT MARINE

The Conference agreed in principle upon arrangements for the use and disposal of the surrendered German fleet and merchant ships. It was decided that the three Governments would appoint experts to work out together detailed plans to give effect to the agreed principles. A further joint statement will be published simultaneously by the three Governments in due course.

## VI

## CITY OF KOENIGSBERG AND THE ADJACENT AREA

The Conference examined a proposal by the Soviet Government that pending the final determination of territorial questions at the peace settlement the section of the western frontier of the Union of Soviet Socialist Republics which is adjacent to the Baltic Sea should pass from a point on the eastern shore of the Bay of Danzig to the east, north of Braunsberg-Goldap, to the meeting point of the frontiers of Lithuania, the Polish Republic and East Prussia.

The Conference has agreed in principle to the proposal of the Soviet Government concerning the ultimate transfer to the Soviet Union of the City of Koenigsberg and the area adjacent to it as described above, subject to expert examination of the actual frontier.

The President of the United States and the British Prime Minister have declared that they will support the proposal of the Conference at the forthcoming peace settlement.

## VII

## WAR CRIMINALS

The three Governments have taken note of the discussions which have been preceding in recent weeks in London between British, United States, Soviet and French representatives with a view to reaching agreement on the methods of trial of those major war criminals whose crimes under the Moscow Declaration of October 1943 have no particular geographic allocalization. The three Governments reaffirm their intention to bring those criminals to swift and sure justice. They hope that the negotiations in London will result in speedy agreement being reached for this purpose, and they regard it as a matter of great importance that the trial of those major criminals should begin at the earliest possible date. The first list of defendants will be published by 1 September.

## VIII

## AUSTRIA

The Conference examined a proposal by the Soviet Government on the extension of the authority of the Austrian Provisional Government to all of Austria.

The three Governments agreed that they were prepared to examine this question after the entry of the British and American forces into the city of Vienna.

## IX

## POLAND

The Conference considered questions relating to the Polish Provisional Government and the western boundary of Poland.

On the Polish Provisional Government of National Unity they defined their attitude in the following statement:—

a) We have taken note with pleasure of the agreement reached among representative Poles from Poland and abroad which has made possible the formation, in accordance with the decisions reached at the Crimea Conference, of a Polish Provisional Government of National Unity recognised by the three Powers. The establishment by the British and United States Governments of diplomatics relations with the Polish Provisional Government has resulted in the withdrawal of their recognition from the former Polish Government in London, which no longer exists.

The British and United States Governments have taken measures to protect the interest of the Polish Provisional Government as the recognised Government of the Polish State in the property belonging to the Polish State located in their territories and under their control, whatever the form of this property may be. They have further taken measures to prevent alienation to third parties of such property. All proper facilities will be given to the Polish Provisional Government for the exercise of the ordinary legal remedies for the recovery of any property belonging to the Polish State which may have been wrongfully alienated.

The three Powers are anxious to assist the Polish Provisional Government in facilitating the return to Poland as soon as practicable of all Poles abroad who wish to go, including members of the Polish Armed Forces and the Merchant Marine. They expect that those Poles who return home shall be accorded personal and property rights on the same basis as all Polish citizens.

The three Powers note that the Polish Provisional Government in accordance with the decisions of the Crimea Conference has agreed to the holding of free and unfettered elections as soon as possible on the basis of universal suffrage and secret ballot in which all democratic and anti-Nazi parties shall have the right to take part and to put forward candidates, and that representatives of the Allied press shall enjoy full freedom to report to the world upon developments in Poland before and during the elections.

b) The following agreement was reached on the western frontier of Poland.

In conformity with the agreement on Poland reached at the Crimea Conference the three Heads of Government have sought the opinion of the Polish Provisional Government of National Unity in regard to the accession of territory in the north and west which Poland should receive. The President of the National Council of Poland and members of the Polish Provisional Government of National Unity have been received at the Conference and have fully presented their views. The three Heads of Government reaffirm their opinion that the final delimitation of the western frontier of Poland should await the peace settlement.

The three Heads of Government agree that, pending the final determination of Poland's western frontier, the former German territories east of a line running from the Baltic Sea immediately west of Swinemunde, and thence along the Oder River to the confluence of the western Neisse River and along the western Neisse to the Czechoslovak frontier, including that portion of East Prussia not placed under the administration of the Union of Soviet Socialist Republics in accordance with the understanding reached at this Conference and including the area of the former free city of Danzig, shall be under the administration of the Polish State and for such purposes should not be considered as part of the Soviet Zone of occupation in Germany.

## X.

## CONCLUSION OF PEACE TREATIES AND ADMISSION TO THE UNITED NATIONS ORGANISATION

The Conference agreed upon the following state-
ent of common policy for establishing, as soon as
ossible, the conditions of lasting peace after victory
Europe:—

> The three Governments consider it desirable that the present anomalous position of Italy, Bulgaria, Finland, Hungary and Rumania should be terminated by the conclusion of Peace Treaties. They trust that the other interested Allied Governments will share these views.
>
> For their part the three Governments have included the preparation of a Peace Treaty for Italy as the first among the immediate important tasks to be undertaken by the new Council of Foreign Ministers. Italy was the first of the Axis Powers to break with Germany, to whose defeat she has made a material contribution, and has now joined with the Allies in the struggle against Japan. Italy has freed herself from the Fascist regime and is making good progress towards the re-establishment of a democratic government and institutions. The conclusion of such a Peace Treaty with a recognised and democratic Italian Government will make it possible for the three Governments to fulfill their desire to support an application from Italy for membership of the United Nations.
>
> The three Governments have also charged the Council of Foreign Ministers with the task of preparing Peace Treaties for Bulgaria, Finland, Hungary and Rumania. The conclusion of Peace Treaties with recognised democratic Governments in these States will also enable the three Governments to support applications from them for membership of the United Nations. The three Governments agree to examine each separately in the near future, in the light of the conditions then prevailing, the establishment of diplomatic relations with Finland, Rumania, Bulgaria, and Hungary to the extent possible prior to the conclusion of peace treaties with those countries.
>
> The three Governments have no doubt that in view of the changed conditions resulting from the termination of the war in Europe, representatives of the Allied press will enjoy full freedom to report to the world upon developments in Rumania, Bulgaria, Hungary and Finland.

As regards the admission of other Sta
the United Nations Organisation, artic
the Charter of the United Nations d
that:—

"1. Membership in the United Nations
to all other peace-loving States who
the obligations contained in the
Charter and, in the judgment
organisation, are able and willing t
out these obligations.

2. The admission of any such State to m
ship in the United Nations will be e
by a decision of the General As
upon the recommendation of the S
Council."

The three Governments, so far as th
concerned, will support application
membership from those States which h
mained neutral during the war and which
the qualifications set out above.

The three Governments feel bound, h
to make it clear that they for their part
not favour any application for members
forward by the present Spanish Gove
which, having been founded with suppor
Axis Powers, does not, in view of its
its nature, its record and its close asso
with the aggressor States, possess the q
ations necessary to justify such memb

## XI.

## TERRITORIAL TRUSTEESHIPS

The Conference examined a proposal
Soviet Government concerning trusteeship ter
as defined in the decision of the Crimea Con
and in the Charter of the United N
Organisation.

After an exchange of views on this que
was decided that the disposition of any
Italian territories was one to be decided
nection with the preparation of a peace tre
Italy and that the question of Italian territory
be considered by the September Council of Mi
of Foreign Affairs.

## XII.

## REVISED ALLIED CONTROL COMMISSI PROCEDURE IN RUMANIA, BULGAR AND HUNGARY

The three Governments took note that the
Representatives on the Allied Control Comm
in Rumania, Bulgaria and Hungary, have
municated to their United Kingdom and
States colleagues, proposals for improving th
of the Control Commission, now that hostili
Europe have ceased.

The three Governments agreed that the r
of the procedures of the Allied Control Comm
in these countries would now be untertaken
into account the interests and responsibili
the three Governments which together pr
the terms of armistice to the respective co
and accepting as a basis the agreed proposals

## XIII.

## ORDERLY TRANSFERS OF GERMAN POPULATIONS

The Conference reached the following agreement on the removal of Germans from Poland, Czechoslovakia and Hungary:—

> The three Governments, having considered the question in all its aspects, recognise that the transfer to Germany of German populations, or elements thereof, remaining in Poland, Czechoslovakia and Hungary, will have to be undertaken. They agree that any transfers that take place should be effected in an orderly and humane manner.
>
> Since the influx of a large number of Germans into Germany would increase the burden already resting on the occupying authorities, they consider that the Allied Control Council in Germany should in the first instance examine the problem with special regard to the question of the equitable distribution of these Germans among the several zones of occupation. They are accordingly instructing their respective representatives on the Control Council to report to their Governments as soon as possible the extent to which such persons have already entered Germany from Poland, Czechoslovakia and Hungary, and to submit an estimate of the time and rate at which further transfers could be carried out, having regard to the present situation in Germany.
>
> The Czechoslovak Government, the Polish Provisional Government and the Control Council in Hungary are at the same time being informed of the above, and are being requested meanwhile to suspend further expulsions pending the examination by the Governments concerned of the report from their representatives on the Control Council.

## XIV

## MILITARY TALKS

During the Conference there were meetings between the Chiefs of Staff of the three Governments on military matters of common interest.

2 August 1945

Approved:

J. V. STALIN

HARRY S. TRUMAN

C. R. ATTLEE

Chief Secretary for the Control Council

Signed

Colonel H. A. Gerhardt

Berlin, 30. April 1946

## Annex 13

# AGREEMENT ON REPARATION FROM GERMANY, ON THE ESTABLISHMENT OF AN INTER-ALLIED REPARATION AGENCY A THE RESTITUTION OF MONETARY GOLD OF 14 JANUARY 1946 (PARIS AGREEMENT)

## No. 8105

## ALBANIA, AUSTRALIA, BELGIUM, CANADA, DENMARK, etc.

**Agreement on reparation from Germany, on the establishment of an Inter-Allied Reparation Agency and on the restitution of monetary gold. Done at Paris, on 14 January 1946; and**

**Protocol attached to the above-mentioned Agreement. Signed at Brussels, on 15 March 1948**

*Official texts : French and English.*

*Registered by France on 15 February 1966.*

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## ALBANIE, AUSTRALIE, BELGIQUE, CANADA, DANEMARK, etc.

**Accord concernant les réparations à recevoir de l'Allemagne, l'institution d'une Agence interalliée des réparations et la restitution de l'or monétaire. Fait à Paris, le 14 janvier 1946; et**

**Protocole additionnel à l'Accord susmentionné. Signé à Bruxelles, le 15 mars 1948**

*Textes officiels français et anglais.*

*Enregistrés par la France le 15 février 1966.*

# No. 8105. AGREEMENT[1] ON REPARATION FROM GERMANY, ON THE ESTABLISHMENT OF AN INTER-ALLIED REPARATION AGENCY AND ON THE RESTITUTION OF MONETARY GOLD. DONE AT PARIS, ON 14 JANUARY 1946

The Governments of Albania, The United States of America, Australia, Belgium, Canada, Denmark, Egypt, France, The United Kingdom of Great Britain and Northern Ireland, Greece, India, Luxembourg, Norway, New Zealand, The Netherlands, Czechoslovakia, The Union of South Africa and Yugoslavia, in order to obtain an equitable distribution among themselves of the total assets which, in accordance with the provisions of this Agreement and the provisions agreed upon at Potsdam on 1 August 1945[2] between the Governments of the United States of America, the United Kingdom of Great Britain and Northern Ireland and the Union of Soviet Socialist Republics, are or may be declared to be available as reparation from Germany (hereinafter referred to as German reparation), in order to establish an Inter-Allied Reparation Agency, and to settle an equitable procedure for the restitution of monetary gold.

Have agreed as follows :

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[1] In accordance with article 1 of Part IV, the Agreement came into force on 24 January 1946 in respect of the following States on behalf of which it was signed on the dates indicated, these States being collectively entitled to 81.45% of the aggregate of shares in category A of German reparation (as defined in article 1 of Part I) :

| *State* | *Date of signature* | *State* | *Date of signature* |
|---|---|---|---|
| Belgium | 14 January 1946 | United Kingdom | 14 January 1946 |
| France | 14 January 1946 | United States of America | 14 January 1946 |
| Luxembourg | 14 January 1946 | Greece | 24 January 1946 |
| Netherlands | 14 January 1946 | | |

It came into force subsequently for the following States upon their signature of the Agreement on the dates indicated :

| *State* | *Date of signature and of entry into force* | *State* | *Date of signature and of entry into force* |
|---|---|---|---|
| Canada | 30 January 1946 | India | 25 February 1946 |
| Yugoslavia | 4 February 1946 | Czechoslovakia | 27 February 1946 |
| Norway | 6 February 1946 | Union of South Africa | 28 February 1946 |
| enmark | 20 February 1946 | Egypt (UAR) | 8 March 1946 |
| New Zealand | 20 February 1946 | Albania | 14 March 1946 |
| ustralia | 25 February 1946 | | |

On 16 December 1947 (with effect from 15 September 1947, the date of entry into force of the Treaty of peace with Italy) Italy adhered to the arrangement for the restitution of monetary gold set forth in part III of the Agreement, see United Nations, *Treaty Series*, Vol. 82, p. 237 ; see also United Nations, *Treaty Series*, Vol. 91, p. 21, and Vol. 100, p. 304.

[2] *British and Foreign State Papers*, Vol. 145, p. 852.

## PART I

## GERMAN REPARATION

### *Article 1*

### SHARES IN REPARATION

A. German reparation, (exclusive of the funds to be allocated under Article 8 of Part I of this Agreement), shall be divided into the following categories:

*Category A*, which shall include all forms of German reparation except those included in Category B,

*Category B*, which shall include industrial and other capital equipment removed from Germany, and merchant ships and inland water transport.

B. Each Signatory Government shall be entitled to the percentage share of the total value of Category A and the percentage share of the total value of Category B set out for that Government in the Table of Shares set forth below:

TABLE OF SHARES

| *Country* | *Category A* | *Category B* |
|---|---|---|
| Albania | .05 | .35 |
| United States of America | 28.00 | 11.80 |
| Australia | .70 | .95 |
| Belgium | 2.70 | 4.50 |
| Canada | 3.50 | 1.50 |
| Denmark | .25 | .35 |
| Egypt | .05 | .20 |
| France | 16.00 | 22.80 |
| United Kingdom | 28.00 | 27.80 |
| Greece | 2.70 | 4.35 |
| India | 2.00 | 2.90 |
| Luxembourg | .15 | .40 |
| Norway | 1.30 | 1.90 |
| New Zealand | .40 | .60 |
| Netherlands | 3.90 | 5.60 |
| Czechoslovakia | 3.00 | 4.30 |
| Union of South Africa [*] | .70 | .10 |
| Yugoslavia | 6.60 | 9.60 |
| TOTAL | 100.00 | 100.00 |

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[*] The Government of the Union of South Africa has undertaken to waive its claims to the extent necessary to reduce its percentage share of Category B to the figure of 0.1 per cent but is entitled, in disposing of German enemy assets within its juridiction, to charge the net value of such assets against its percentage share of Category A and a percentage share under Category B of 1.0 per cent.

C. Subject to the provisions of paragraph D below, each Signatory Government shall be entitled to receive its share of merchant ships determined in accordance with Article 5 of Part I of this Agreement, provided that its receipts of merchant ships do not exceed in value its share in Category B as a whole.

Subject to the provisions of paragraph D below, each Signatory Government shall also be entitled to its Category A percentage share in German assets in countries which remained neutral in the war against Germany.

The distribution among the Signatory Governments of forms of German reparation other than merchant ships, inland water transport and German assets in countries which remained neutral in the war against Germany shall be guided by the principles set forth in Article 4 of Part I of this Agreement.

D. If a Signatory Government receives more than its percentage share of certain types of assets in either Category A or Category B, its receipts of other types of assets in that Category shall be reduced so as to ensure that it shall not receive more than its share in that Category as a whole.

E. No Signatory Government shall receive more than its percentage share of either Category A or Category B as a whole by surrendering any part of its percentage share of the other Category, except that with respect to German enemy assets within its own jurisdiction, any Signatory Government shall be permitted to charge any excess of such assets over its Category A percentage share of total German enemy assets within the jurisdiction of the Signatory Governments either to its receipts in Category A or to its receipts in Category B or in part to each Category.

F. The Inter-Allied Reparation Agency, to be established in accordance with Part II of this Agreement, shall charge the reparation account of each Signatory Government for the German assets within that Government's jurisdiction over a period of five years. The charges at the date of the entry into force of this Agreement shall be not less than 20 per cent of the net value such assets (as defined in Article 6 of Part I of this Agreement) as then stimated, at the beginning of the second year thereafter not less than 25 per nt of the balance as then estimated, at the beginning of the third year not less than $33,^{1}/_{3}$ % per cent of the balance as then estimated, at the beginning of the fourth year not less than 50 per cent of the balance as then estimated, at the beginning of the fifth year not less than 90 per cent of the balance as then estimated, and at the end of the fifth year the entire remainder of the total amount actually realized.

G. The following exceptions to paragraphs D and E above shall apply in the case of a Signatory Government whose share in Category B is less than its share in Category A:

(i) Receipts of merchant ships by any such Government shall not reduce its percentage share in other types of assets in Category B, except to the extent that such receipts exceed the value obtained when that Government's Category A percentage is applied to the total value of merchant ships.

(ii) Any excess of German assets within the jurisdiction of such Government over its Category A percentage share of the total of German assets within the jurisdiction of Signatory Government as a whole shall be charged first to the additional share in Category B to which that Government would be entitled if its share in Category B were determined by applying its Category A percentage to the forms of German reparation in Category B.

H. If any Signatory Government renounces its shares or part of its shares in German reparation as set out in the above Table of Shares, or if it withdraws from the Inter-Allied Reparation Agency at a time when all or part of its shares in German reparation remain unsatisfied, the shares or part thereof thus renounced or remaining shall be distributed rateably among the other Signatory Governments.

### *Article 2*

### SETTLEMENT OF CLAIMS AGAINST GERMANY

A. The Signatory Governments agree among themselves that their respective shares of reparation, as determined by the present Agreement, shall be regarded by each of them as covering all its claims and those of its nationals against the former German Government and its Agencies, of a governmental or private nature, arising out of the war (which are not otherwise provided for), including costs of German occupation, credits acquired during occupation on clearing accounts and claims against the Reichskreditkassen.

B. The provisions of paragraph A above are without prejudice to:

(i) the determination at the proper time of the forms, duration or total amount of reparation to be made by Germany;

(ii) the right which each Signatory Government may have with respect to the final settlement of German reparation; and

(iii) any political, territorial or other demands which any Signatory Government may put forward with respect to the peace settlement with Germany.

C. Notwithstanding anything in the provisions of paragraph A above, the present Agreement shall not be considered as affecting:

(i) the obligation of the appropriate authorities in Germany to secure at a future date the discharge of claims against Germany and German nationals arising out of contracts and other obligations entered into, and rights acquired, before the existence of a state of war between Germany and the Signatory Government concerned or before the occupation of its territory by Germany, whichever was earlier;

(ii) the claims of Social Insurance Agencies of the Signatory Governments or the claims of their nationals against the Social Insurance Agencies of the former German Government; and

(iii) banknotes of the Reichsbank and the Rentenbank, it being understood that their realization shall not have the result of reducing improperly the amount of reparation and shall not be effected without the approval of the Control Council for Germany.

D. Notwithstanding the provisions of Paragraph A of this Article, the Signatory Governments agree that, so far as they are concerned, the Czechoslovak Government will be entitled to draw upon the Giro account of the National Bank of Czechoslovakia at the Reichsbank, should such action be decided upon by the Czechoslovak Government and approved by the Control Council for Germany, in connection with the movement from Czechoslovakia to Germany of former Czechoslovak nationals.

### *Article 3*

### WAIVER OF CLAIMS REGARDING PROPERTY ALLOCATED AS REPARATION

Each of the Signatory Governments agrees that it will not assert, initiate actions in international tribunals in respect of, or give diplomatic support to claims on behalf of itself or those persons entitled to its protection against any other Signatory Government or its nationals in respect of property received by that Government as reparation with the approval of the Control Council for Germany.

### *Article 4*

### GENERAL PRINCIPLES FOR THE ALLOCATION OF INDUSTRIAL AND OTHER CAPITAL EQUIPMENT

A. No Signatory Government shall request the allocation to it as reparation of any industrial or other capital equipment removed from Germany except for use in its own territory or for use by its own nationals outside its own territory.

B. In submitting requests to the Inter-Allied Reparation Agency, the Signatory Governments should endeavour to submit comprehensive programs of requests for related groups of items, rather than requests for isolated items or small groups of items. It is recognized that the work of the Secretariat of the Agency will be more effective, the more comprehensive the programs which Signatory Governments submit to it.

C. In the allocation by the Inter-Allied Reparation Agency of items declared available for reparation (other than merchant ships, inland water transport and German assets in countries which remained neutral in the war against Germany), the following general principles shall serve as guides:

(i) Any item or related group of items in which a claimant country has a substantial prewar financial interest shall be allocated to that country if it so desires. Where two or more claimants have such substantial interests in a particular item or group of items, the criteria stated below shall guide the allocation.

(ii) If the allocation between competing claimants is not determined by paragraph (i), attention shall be given, among other relevant factors, to the following considerations:

(*a*) The urgency of each claimant country's needs for the item or items to rehabilitate, reconstruct or restore to full activity the claimant country's economy;

(*b*) The extent to which the item or items would replace property which was destroyed, damaged or looted in the war, or requires replacement because of excessive wear in war production, and which is important to the claimant country's economy;

(*c*) The relation of the item or items to the general pattern of the claimant country's prewar economic life and to programs for its postwar economic adjustment or development;

(*d*) The requirements of countries whose reparation shares are small but which are in need of certain specific items or categories of items.

(iii) In making allocations a reasonable balance shall be maintained among the rates at which the reparation shares of the several claimant Governments are satisfied, subject to such temporary exceptions as are justified by the considerations under paragraph (ii) (*a*) above.

## *Article 5*

### General Principles for the Allocation of Merchant Ships and Inland Water Transport

A. (i) German merchant ships available for distribution as reparation among the Signatory Governments shall be distributed among them in proportion to the respective over-all losses of merchant shipping, on a gross tonnage basis, of the Signatory Governments and their nationals through acts of war. It is recognized that transfers of merchant ships by the United Kingdom and United States Governments to other Governments are subject such final approvals by the legislatures of the United Kingdom and United States of America as may be required.

(ii) A special committee, composed of representatives of the Signatory Governments, shall be appointed by the Assembly of the Inter-Allied Reparation Agency to make recommendations concerning the determination of such losses and the allocation of German merchant ships available for distribution.

(iii) The value of German merchant ships for reparation accounting purposes shall be the value determined by the Tri-partite Merchant Marine Commission in terms of 1938 prices in Germany plus 15 per cent, with an allowance for depreciation.

B. Recognizing that some countries have special need for inland water transport, the distribution of inland water transport shall be dealt with by a special committee appointed by the Assembly of the Inter-Allied Reparation Agency in the event that inland water transport becomes available at a future time as reparation for the Signatory Governments. The valuation of inland water transport will be made on the basis adopted for the valuation of merchant ships or on an equitable basis in relation to that adopted for merchant ships.

## *Article 6*

### German External Assets

A. Each Signatory Government shall, under such procedures as it may choose, hold or dispose of German enemy assets within its jurisdiction in manners designed to preclude their return to German ownership or control and shall charge against its reparation share such assets (net of accrued taxes, liens, expenses of administration, other *in rem* charges against specific items and legitimate contract claims against the German former owners of such assets).

B. The Signatory Governments shall give to the Inter-Allied Reparation Agency all information for which it asks as to the value of such assets and the amounts realized from time to time by their liquidation.

C. German assets in those countries which remained neutral in the war against Germany shall be removed from German ownership or control and liquidated or disposed of in accordance with the authority of France, the United Kingdom and the United States of America, pursuant to arrangements to be negotiated with the neutrals by these countries. The net proceeds of liquidation or disposition shall be made available to the Inter-Allied Reparation Agency for distribution on reparation account.

D. In applying the provisions of paragraph A above, assets which were the property of a country which is a member of the United Nations or its nationals who were not nationals of Germany at the time of the occupation or annexation of this country by Germany, or of its entry into war, shall not be charged to its reparation account. It is understood that this provision in no way prejudges any questions which may arise as regards assets which were not the property of a national of the country concerned at the time of the latter's occupation or annexation by Germany or of its entry into war.

E. The German enemy assets to be charged against reparation shares shall include assets which are in reality German enemy assets, despite the fact that the nominal owner of such assets is not a German enemy. Each Signatory Government shall enact legislation or take other appropriate steps, if it has not already done so, to render null and void all transfers made, after the occupation of its territory or its entry into war, for the fraudulent purpose of cloaking German enemy interests, and thus having them harmless from the effect of control measures regarding German enemy interests.

F. The Assembly of the Inter-Allied Reparation Agency shall set up a Committee of Experts in matters of enemy property custodianship in order to overcome practical difficulties of law and interpretation which may arise. The Committee should in particular guard against schemes which might result in effecting fictitious or other transactions designed to favour enemy interests, or to reduce improperly the amount of assets which might be allocated to reparation.

### *Article 7*

### CAPTURED SUPPLIES

The value of supplies and other materials susceptible of civilian use captured from the German Armed Forces in areas outside Germany and delivered to Signatory Governments shall be charged against their reparation shares in so far as such supplies and materials have not been or are not, in the future either paid for or delivered under arrangements precluding any charge.

It is recognised that transfers of such supplies and materials by the United Kingdom and United States Governments to other Governments are agreed to be subject to such final approval by the legislature of the United Kingdom or the United States of America as may be required.

### *Article 8*

### ALLOCATION OF A REPARATION SHARE TO NON-REPATRIABLE VICTIMS OF GERMAN ACTION

In recognition of the fact that large numbers of persons have suffered heavily at the hands of the Nazis and now stand in dire need of aid to promote their rehabilitation but will be unable to claim the assistance of any Government receiving reparation from Germany, the Governments of the United States of America, France, the United Kingdom, Czechoslovakia and Yugoslavia, in consultation with the Inter-Governmental Committee on Refugees, shall as soon as possible work out in common agreement a plan on the following general lines:

A. A share of reparation consisting of all the non-monetary gold found by the Allied Armed Forces in Germany and in addition a sum not exceeding 25 million dollars shall be allocated for the rehabilitation and resettlement of non-repatriable victims of German action.

B. The sum of 25 million dollars shall be met from a portion of the proceeds of German assets in neutral countries which are available for reparation.

C. Governments of neutral countries shall be requested to make available for this purpose (in addition to the sum of 25 million dollars) assets in such countries of victims of Nazi action who have since died and left no heirs.

D. The persons eligible for aid under the plan in question shall be restricted to true victims of Nazi persecution and to their immediate families and dependents, in the following classes :

(i) Refugees from Nazi Germany or Austria who require aid and cannot be returned to their countries within a reasonable time because of prevailing conditions ;

(ii) German and Austrian nationals now resident in Germany or Austria in exceptional cases in which it is reasonable on grounds of humanity to assist such persons to emigrate and providing they emigrate to other countries within a reasonable period ;

(iii) Nationals of countries formerly occupied by the Germans who cannot be repatriated or are not in a position to be repatriated within a reasonable time. In order to concentrate aid on the most needy and deserving refugees and to exclude persons whose loyalty to the United Nations is or was doubtful, aid shall be restricted to nationals or former nationals of previously occupied countries who were victims of German concentration camps or of concentration camps established by regimes under Nazi influence but not including persons who have been confined only in prisoners of war camps.

E. The sums made available under paragraphs A and B above shall be administered by the Inter-Governmental Committee on Refugees or by a United Nations Agency to which appropriate functions of the Inter-Governmental Committee may in the future be transferred. The sums made available under paragraph C above shall be administered for the general purposes referred to in this Article under a program of administration to be formulated by the five Governments named above.

F. The non-monetary gold found in Germany shall be placed at the disposal of the Inter-Governmental Committee on Refugees as soon as a plan has has been worked out as provided above.

G. The Inter-Governmental Committee on Refugees shall have power to carry out the purposes of the fund through appropriate public and private field organisations.

H. The fund shall be used, not for the compensation of individual victims, but to further the rehabilitation or resettlement of persons in the eligible classes.

I. Nothing in this Article shall be considered to prejudice the claims which individual refugees may have against a future German Government, except to the amount of the benefits that such refugees may have received from the sources referred to in paragraphs A and C above.

## PART II

## INTER-ALLIED REPARATION AGENCY

### *Article 1*

### ESTABLISHMENT OF THE AGENCY

The Governments Signatory to the present Agreement hereby establish an Inter-Allied Reparation Agency (hereinafter referred to as " The Agency "). Each Government shall appoint a Delegate to the Agency and shall also be entitled to appoint an Alternate who, in the absence of the Delegate, shall be entitled to exercise all the functions and rights of the Delegate.

### *Article 2*

### FUNCTIONS OF THE AGENCY

A. The Agency shall allocate German reparation among the Signatory Governments in accordance with the provisions of this Agreement and of any other agreements from time to time in force among the Signatory Governments. For this purpose, the Agency shall be the medium through which the Signatory Governments receive information concerning, and express their wishes in regard to, items available as reparation.

B. The Agency shall deal with all questions relating to the restitution to a Signatory Government of property situated in one of the Western Zones of Germany which may be referred to it by the Commander of that Zone (acting on behalf of his Government), in agreement with the claimant Signatory Government or Governments, without prejudice, however, to the settlement of such questions by the Signatory Governments concerned either by agreement or arbitration.

### *Article 3*

### INTERNAL ORGANIZATION OF THE AGENCY

A. The organs of the Agency shall be the Assembly and the Secretariat.

B. The Assembly shall consist of the Delegates and shall be presided over by the President of the Agency. The President of the Agency shall be the delegate of the Government of France.

C. The Secretariat shall be under the direction of a Secretary General, assisted by two Deputy Secretaries General. The Secretary General and the two Deputy Secretaries General shall be appointed by the Governments of France, the United States of America and the United Kingdom. The Secretariat shall be international in character. It shall act for the Agency and not for the individual Signatory Governments.

### *Article 4*

### FUNCTIONS OF THE SECRETARIAT

The Secretariat shall have the following functions:

A. To prepare and submit to the Assembly programs for the allocation of German reparation;

B. To maintain detailed accounts of assets available for, and of assets distributed as, German reparation;

C. To prepare and submit to the Assembly the budget of the Agency;

D. To perform such other administrative functions as may be required.

### *Article 5*

### FUNCTIONS OF THE ASSEMBLY

Subject to the provisions of Articles 4 and 7 of Part II of this Agreement, the Assembly shall allocate German reparation among the Signatory Governments in conformity with the provisions of this Agreement and of any other agreements from time to time in force among the Signatory Governments. It shall also approve the budget of the Agency and shall perform such other functions as are consistent with the provisions of this Agreement.

### *Article 6*

### VOTING IN THE ASSEMBLY

Except as otherwise provided in this Agreement, each delegate shall have one vote. Decisions in the Assembly shall be taken by a majority of the votes cast.

### *Article 7*

### APPEAL FROM DECISIONS OF THE ASSEMBLY

A. When the Assembly has not agreed to a claim presented by a Delegate that an item should be allocated to his Government, the Assembly shall, at the request of that Delegate and within the time limit prescribed by the Assembly, refer the question to arbitration. Such reference shall suspend the effect of the decision of the Assembly on that item.

B. The Delegates of the Government claiming an item referred to arbitration under paragraph A above shall elect an Arbitrator from among the other Delegates. If agreement cannot be reached upon the selection of an Arbitrator, the United States Delegate shall either act as Arbitrator or appoint as Arbitrator another Delegate from among the Delegates whose Governments are not claiming the item. If the United States Government is one of the claimant Governments, the President of the Agency shall appoint as Arbitrator a Delegate whose Government is not a claimant Government.

### *Article 8*

### POWERS OF THE ARBITRATOR

When the question of the allocation of any item is referred to arbitration under Article 7 of Part II of this Agreement, the Arbitrator shall have authority to make final allocation of the item among the claimant Governments. The Arbitrator may, at his discretion, refer the item to the Secretariat for further study. He may also, at his discretion, require the Secretariat to resubmit the item to the Assembly.

### *Article 9*

### EXPENSES

A. The salaries and expenses of the Delegates and of their staffs shall be paid by their own Governments.

B. The common expenses of the Agency shall be met from the funds of the Agency. For the first two years from the date of the establishment of the Agency, these funds shall be contributed in proportion to the percentage shares of the Signatory Governments in Category B and thereafter in proportion to their percentage in Category A.

C. Each Signatory Government shall contribute its share in the budget of the Agency for each budgetary period (as determined by the Assembly) at the beginning of that period; provided that each Government shall, when this Agreement is signed on its behalf, contribute a sum equivalent to not less than its Category B percentage share of £ 50,000 and shall, within three months thereafter, contribute the balance of its share in the budget of the Agency for the budgetary period in which this Agreement is signed on its behalf.

D. All contributions by the Signatory Governments shall be made in Belgian francs or such other currency or currencies as the Agency may require.

### *Article 10*

### VOTING ON THE BUDGET

In considering the budget of the Agency for any budgetary period, the vote of each Delegate in the Assembly shall be proportional to the share of the budget for that period payable by his Government.

### *Article 11*

### OFFICIAL LANGUAGES

The official languages of the Agency shall be English and French.

### *Article 12*

### OFFICES OF THE AGENCY

The seat of the Agency shall be in Brussels. The Agency shall maintain liaison offices in such other places as the Assembly, after obtaining the necessary consents, may decide.

### *Article 13*

### WITHDRAWAL

Any Signatory Government, other than a Government which is responsible for the control of a part of German territory, may withdraw from the Agency after written notice to the Secretariat.

### *Article 14*

### AMENDMENTS AND TERMINATION

This Part II of the Agreement can be amended or the Agency terminated by a decision in the Assembly of the majority of the Delegates voting, provided that the Delegates forming the majority represent Governments whose shares constitute collectively not less than 80 percent of the aggregate of the percentage shares in Category A.

### *Article 15*

### LEGAL CAPACITY. IMMUNITIES AND PRIVILEGES

The Agency shall enjoy in the territory of each Signatory Government such legal capacity and such privileges, immunities and facilities, as may be necessary for the exercise of its functions and the fulfilment of its purpose. The representatives of the Signatory Governments and the officials of the Agency shall enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Agency.

## PART III

## RESTITUTION OF MONETARY GOLD

### *Single Article*

A. All the monetary gold found in Germany by the Allied Forces and that referred to in paragraph G below (including gold coins, except those of numismatic or historical value, which shall be restored directly if identifiable) shall be pooled for distribution as restitution among the countries participating in the pool in proportion to their respective losses of gold through looting or by wrongful removal to Germany.

B. Without prejudice to claims by way of reparation for unrestored gold, the portion of monetary gold thus accruing to each country participating in the pool shall be accepted by that country in full satisfaction of all claims against Germany for restitution of monetary gold.

C. A proportional share of the gold shall be allocated to each country concerned which adheres to this arrangement for the restitution of monetary gold and which can establish that a definite amount of monetary gold belonging to it was looted by Germany or, at any time after March 12th, 1938, was wrongfully removed into German territory.

D. The question of the eventual participation of countries not represented at the Conference (other than Germany but including Austria and Italy) in the above mentioned distribution shall be reserved, and the equivalent of the total shares which these countries would receive, if they were eventually admitted to participate, shall be set aside to be disposed of at a later date in such manner as may be decided by the Allied Governments concerned.

E. The various countries participating in the pool shall supply to the Governments of the United States of America, France and the United Kingdom, as the occupying Powers concerned, detailed and verifiable data regarding the gold losses suffered through looting by, or removal to, Germany.

F. The Governments of the United States of America, France and the United Kingdom shall take appropriate steps within the Zones of Germany occupied by them respectively to implement distribution in accordance with the foregoing provisions.

G. Any monetary gold which may be recovered from a third country to which it was transferred from Germany shall be distributed in accordance with this arrangement for the restitution of monetary gold.

## PART IV

## ENTRY INTO FORCE AND SIGNATURE

### *Article 1*

### ENTRY INTO FORCE

This Agreement shall be open for signature on behalf of any Government represented at the Paris Conference on Reparation.

As soon as it has been signed on behalf of Governments collectively entitled to not less than 80 % of the aggregate of shares in Category A of German reparation, it shall come into force among such Signatory Governments.

The Agreement shall thereafter be in force among such Governments and those Governments on whose behalf it is subsequently signed.

### *Article 2*

### SIGNATURE

The signature of each contracting Government shall be deemed to mean that the effect of the present Agreement extends to the colonies and overseas territories of such Government, and to territories under its protection or suzerainety or over which it at present exercises a mandate.

IN WITNESS WHEREOF, the undersigned, duly authorized by their respective Governments, have signed in Paris the present Agreement in the English and French languages,[1] the two texts being equally authentic, in a single original, which shall be deposited in the Archives of the Government of the French Republic, a certified copy thereof being furnished by that Government to each Signatory Government.

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[1] For the dates on which the signatures were affixed, see footnote 1, p. 71 of this volume.

**Pour l'Albanie :**
**For Albania :**

**Kahreman YLLI**

**Pour les États-Unis d'Amérique :**
**For the United States of America :**

**Jefferson CAFFERY**

**Pour l'Australie :**
**For Australia :**

**W. R. HODGSON**

**Pour la Belgique :**
**For Belgium :**

**GUILLAUME**

**Pour le Canada :**
**For Canada :**

**George P. VANIER**

**Pour le Danemark :**
**For Denmark :**

**J. C. W. KRUSE**

**Pour l'Égypte :**
**For Egypt :**

**FAHKRY Pacha**

**Pour la France :**
**For France :**

**BIDAULT**

**Pour le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord :**
**For the United Kingdom of Great Britain and Northern Ireland :**

**Duff COOPER**

**Pour la Grèce :**
**For Greece :**

**P. A. ARGYROPOULO**

Pour l'Inde :
For India :

P. Chaudhuri

Ces signatures sont données en accord avec le Représentant de Sa Majesté Britannique qui exerce les fonctions de la couronne dans les relations de celle-ci avec les États Indiens.

These signatures are appended in agreement with His Britannic Majesty's representative or the exercise of the functions of the Crown in its relation with the Indian States.

Pour le Luxembourg :
For Luxembourg :

Ant. Funck

Pour la Norvège :
For Norway :

Ludvig Aubert

Pour la Nouvelle-Zélande :
For New Zealand :

W. Clinkard

Pour les Pays-Bas :
For the Netherlands :

E. Star-Busmann

Pour la Tchécoslovaquie :
For Czechoslovakia :

Jindrich Nosek

Pour l'Union de l'Afrique du Sud :
For the Union of South Africa :

Duff Cooper

Pour la Yougoslavie :
For Yugoslavia :

Marko Ristic

# PROTOCOL[1] ATTACHED TO THE PARIS AGREEMENT OF 14 JANUARY 1946[2] ON REPARATION FROM GERMANY, ON THE ESTABLISHMENT OF AN INTER-ALLIED REPARATION AGENCY AND ON THE RESTITUTION OF MONETARY GOLD. SIGNED AT BRUSSELS, ON 15 MARCH 1948

The Governments of Albania, United States of America, Australia, Belgium, Canada, Denmark, Egypt, France, United Kingdom of Great Britain and Northern Ireland, Greece, India, Luxemburg, Norway, New Zealand, Netherlands, Czechoslovakia, Union of South Africa and Yugoslavia, having taken note of the Arrangement of 22 January 1948 under which the Governments of the Dominion of India and the Dominion of Pakistan have agreed to the apportionment between them, in the following manner, of the reparation percentage shares allotted to the Government of India under Article I B of the Paris Agreement of 14 January 1946 :[2]

India : Category A ... 1.65 Category B ... 2.39
Pakistan : Category A ... 0.35 Category B ... 0.51

Having noted that the Government of the Dominion of India and the Government of the Dominion of Pakistan have agreed that the value of Reparation assets in Category B allocated to the Government of India up to and including 14 August 1947, and amounting, subject to such accounting adjustments by the Inter-Allied Reparation Agency as may become necessary, to RM. 10.900.000, will be considered to have been apportioned in the following manner :

Dominion of India : RM. 8,983,000
Dominion of Pakistan : RM. 1,917,000

it being understood that the above apportionment is susceptible of adjustment by mutual agreement between the Governments of the Dominions of India and Pakistan.

Having noted that the Government of the Dominion of India and the Government of the Dominion of Pakistan have agreed that the value of Reparation Assets in Category B allocated to the Government of India between 15 August 1947, and 22 January 1948, and amounting, subject to such accounting adjustments by the Inter-Allied Reparation Agency as may become necessary, to RM. 1,068,000, will be considered to have been allocated to the Government of the Dominion of India, it being understood that the above allocation is susceptible of adjustment by mutual agreement between the Governments of the Dominions of India and Pakistan.

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[1] Came into force on 15 March 1948, upon its signature on behalf of all the States signatories of the Agreement on Reparation of 14 January 1946 and the Government of Pakistan, with effect from 24 January 1946, the date of entry into force of the said Agreement, in accordance with the provisions of the Protocol.

[2] See p. 71 of this volume.

Have agreed as follows :

Upon the signature of the present Protocol by the Governments signatories of the Paris Agreement and by the Government of the Dominion of Pakistan, the Dominion of Pakistan shall be deemed to have been a Government signatory of the Paris Agreement, as from the date of the entry into force of the said Agreement, with corresponding rights and obligations, and to have adhered to the unanimous resolutions of the Paris Conference on Reparation. The Governments of the Dominion of India and the Dominion of Pakistan shall respectively be entitled to receive the following reparation shares :

| | | |
|---|---|---|
| India | : Category A ... 1.65 | Category B ... 2.39 |
| Pakistan | : Category A ... 0.35 | Category B ... 0.51 |

IN WITNESS THEREOF, the undersigned, duly authorised by their respective Governments, have signed on 15 March 1948 in Brussels the present Protocol, in the English and French languages, the two texts being equally authentic, in a single original which shall be annexed to the Paris Agreement and deposited in the Archives of the Government of the French Republic, a certified copy thereof being furnished by that Government to each Signatory Government, and a certified copy of the Paris Agreement to the Government of the Dominion of Pakistan.

Pour l'Albanie :
For Albania :

L. JOANIDHI

Pour les États-Unis d'Amérique :
For United States of America :

Russel H. DORR

Pour l'Australie :
For Australia :

Ronald WALKER

Pour la Belgique :
For Belgium :

René DIDISHEIM

Pour le Canada :
For Canada :

Victor DORÉ

Pour le Danemark :
For Denmark :

Bent FALKENSTJERNE

Pour l'Égypte :
For Egypt :

SEDDIK Pacha

Pour la France :
For France :

Jacques RUEFF

Pour le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord :
For United Kingdom of Great Britain and Northern Ireland :

Desmond MORTON

Pour la Grèce :
For Greece :

T. TRIANTAFYLLAKOS

**Pour l'Inde :**
**For India :**
**R.-S. MANI**

**Pour le Luxembourg :**
**For Luxemburg :**
**N. HOMMEL**

**Pour la Norvège :**
**For Norway :**
**Thore BOYE**

**Pour la Nouvelle-Zélande :**
**For New Zealand :**
**Desmond MORTON**

**Pour le Pakistan :**
**For Pakistan :**
**Habib I. RAHIMTOOLA**

**Pour les Pays-Bas :**
**For Netherlands :**
**E.-A. LIEFR IN C**

**Pour la Tchécoslovaquie :**
**For Czechoslovakia :**
**Célestin SMIR**

**Pour l'Union de l'Afrique du Sud :**
**For the Union of South Africa :**
**J.-K. CHRISTIE**

**Pour la Yougoslavie :**
**For Yugoslavia :**
**S. ORLIC**

## Annex 14

## ALLIED CONTROL COUNCIL LAW NO. 5 ON VESTING AND MARSHALLING OF GERMAN EXTERNAL ASSETS OF 30 OCTOBER 1945

e) When the offense committed is not of such a nature as to compromise the security of the Allied Forces, the Military Command may leave it to the jurisdiction of German Courts.

### Article IV

To effect the reorganisation of the judicial system, all former members of the Nazi Party who have been more than nominal participants in its activities and all other persons who directly followed the punitive practices of the Hitler regime must be dismissed from appointments as judges and prosecutors and will not be admitted to these appointments.

### Article V

In carrying out this law, it is left to the discretion of the Military Command gradually to bring the jurisdiction of German courts into conformity with this law.

### Article VI

This law will come into force from the date of its promulgation. The Military Commanders of Zones are charged with its execution.

Done at Berlin, 30 October 1945.

P. KOENIG
Général de Corps d'Armée
G. ZHUKOV
Marshal of the Soviet Union
DWIGHT D. EISENHOWER
General of the Army
B. L. MONTGOMERY
Field Marshal

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— 9 —

## LAW N° 5

*Vesting and Marshalling of German External*

Whereas the Control Council is determined assume control of all German assets abroad a. to divest the said assets of their German owners with the intention thereby of promoting international peace and collective security by the elimination of German war potentials.

Now, therefore, the Control Council, in accordance with the decisions of the Potsdam Conference and the political and economic principles by which it is necessary to be guided in dealing with this problem, enacts as follows:

### Article I

A German External Property Commission (hereinafter referred to as "the Commission") composed of representatives of the Four Occupying Powers in Germany is hereby constituted.

For the purpose of carrying out the provisions of this Law the Commission is constituted as an inter-governmental agency of the Control Council vested with all the necessary powers and authority.

### Article II

All rights, titles and interests in respect of any property outside Germany which is owned or controlled by any person of German nationality inside Germany are hereby vested in the Commission.

### Article III

All rights, titles and interests in respect of any property outside Germany which is owned or controlled by any person of German nationality outside Germany or by any branch of any business or corporation or other legal entity organised under the laws of Germany or having its principal place of business in Germany are hereby vested in the Commission.

For the purpose of this Article the term "any person of German Nationality outside Germany" shall apply only to a person who has enjoyed full rights of German citizenship under Reich Law at any time since 1 September 1939 and who has at any time since 1 September 1939 been within any territory then under the control of the Reich Government but shall not apply to any citizen of any country annexed or claimed to have been annexed by Germany since 31 December 1937.

### Article IV

The Commission has power by unanimous agreement from time to time to add to the categories of persons to be affected by Articles II and III of this Law unless such addition is vetoed by the Control Council within 30 days of agreement by the Commission.

### Article V

The question of whether or not any compensation shall be paid to any person whose right, title or interest in any property has been vested in accordance with this law will be decided at such time and in such manner as the Control Council may in the future determine.

### Article VI

The right, title and interest to all property, title to which has been vested in the Commission under this Law, or the proceeds of such property, shall be held by the Commission and disposed of pursuant to such further directives as the Control Council may issue from time to time.

### Article VII

In addition to the general powers contained in Article I of this Law the Commission shall be vested with the following specific powers which it may exercise directly or through any agency which it deems appropriate:

a) to do all acts which it deems necessary or appropriate to obtain possession or control over all property, the right, title or interest in which is vested in the Commission under this Law;

b) to operate, control and otherwise exercise complete dominion over all such property, including, where this is essential to the preservation of the value represented by the property, the sale, liquidation or other disposal thereof subject to the provisions of Article VI;

c) to require the keeping of full records, and to seize or require the production of any books of account, records, contracts, letters, memoranda, or other papers relating to any property affected by this Law and to compel the attendance of witnesses and to require the furnishing of full information regarding such property;

d) to require information, evidence and records with regard to any property outside Germany, in whole or in part, of all persons covered by Articles II and III hereof.

### Article VIII

The work within any zone of occupation of marshalling and recording the evidence with respect to Germany's external assets shall be the responsibility of the Commander-in-Chief for that zone.

The Commission may request Zone Commanders to conduct certain investigations either alone or in conjunction with investigations being conducted in other zones, and, further, may itself conduct joint investigations in cases where the evidence is contained in more than one zone subject to the authority of the Commander-in-Chief in any zone in which such joint investigation is being conducted.

### Article IX

Articles II and III of this Law shall not apply to assets subject to the jurisdiction of the United Kingdom, British Dominions, India, Colonies and Possessions, the Union of Soviet Socialist Republics, the United States, France and any other United Nations determined by the Control Council.

### Article X

For the purposes of this Law:

a) the term "person" shall include any natural person or collective person or any juridical person or entity under public or private law having legal capacity to acquire, use, control or dispose of property or interests therein, and any government, including all political sub-divisions, public corporations, agencies and any instrumentalities thereof. Any juridical person or entity which is organised under the laws of, or has its principal place of business in, Germany shall be deemed to be a person of German nationality within the meaning of Article II hereof.

The term "property" shall include all movable and immovable property and all rights and interests in or claims to such property whether matured or not, including all property, rights, interests or claims transferred to or held by third parties as nominees or trustees and all property, rights, interests or claims transferred by way of gift or otherwise or for consideration, express or implied, but not including the rights or interests of third parties to a bona fide sale for full consideration, and shall include but shall not be limited to buildings and lands, goods, wares and merchandise, chattels, coin, bullion, currency, deposits, accounts or debts, shares, claims, bills of lading, warehouse receipts, all kinds of financial instruments whether expressed in Reichsmarks or in any foreign currency, evidences of indebtedness or ownership of property, contracts, judgments, rights in or with respect to patents, copyrights, trademarks, etc., and in general property of any nature whatsoever.

### Article XI

shall be an offence:

For any person whose property is affected by this Law to do or to attempt to do any act or make any omission in derogation of the title or interest of the Commission under Articles II and III, or

To assist or conspire with any other person to do or to attempt to do any such act or make such omissions as are specified in this Article.

### Article XII

y person violating any provision of this Law
e liable to criminal prosecution.

### Article XIII

provisions of laws or decrees or parts there-
ich are contradictory to any one of the pro-
s of this Law or of any law or decree issued

under the provisions of this Law are hereby declared null and void.

Done at Berlin, 30 October 1945.

P. KOENIG
Général de Corps d'Armée

G. ZHUKOV
Marshal of the Soviet Union

DWIGHT D. EISENHOWER
General of the Army

B. L. MONTGOMERY
Field Marshal

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— 10 —

## LAW Nº 6

### *Safeguarding of Documents and Delivery of Conformed Copies*

The Control Council enacts as follows:

### Article I

For cases in which Military Government has not designated or expressly recognised another legal custodian, any officer or any representative of Military Government who has been charged with the operation or control of a public office, of a private enterprise or of any other German organisation is, legally, the custodian of any documents appertaining to that organisation.

### Article II

This officer or representative is empowered to furnish copies of a document if a request appears to him to be justified, and to certify that they conform to the original; and the certification of any such record or document by any Military Government Officer or other representative of Military Government shall constitute prima facie evidence of the fact that no other lawful custodian of such record or document is available and that he has authority hereunder to execute such certification.

Done at Berlin, 10 November 1945.

G. ZHUKOV
Marshal of the Soviet Union

LUCIUS D. CLAY
Lieutenant General

B L. MONTGOMERY
Field Marshal

L. KOELTZ
Général de Corps d'Armée

## Annex 15

# LAW NO. 63 OF THE COUNCIL OF THE ALLIED HIGH COMMISSION CLARIFYING THE STATUS OF GERMAN EXTERNAL ASSETS AND OF OTHER PROPERTY TAKEN BY WAY OF REPARATION OR RESTITUTION OF 31 AUGUST 1951

## LOI No 63

### PRECISANT LE STATUT DES AVOIRS ALLEMANDS À L'ÉTRANGER ET DES AUTRES BIENS APPRÉHENDÉS AU TITRE DES RÉPARATIONS OU DES RESTITUTIONS

ATTENDU QUE les Puissances Alliées sont parties à des accords internationaux relatifs à la liquidation des avoirs allemands à l'étranger et à l'enlèvement d'Allemagne de certains biens au titre des réparations,

ATTENDU QUE la Déclaration de Londres, en date du 5 janvier 1943, a réservé les droits des pays occupés par l'Allemagne pendant la guerre à la restitution des biens qui ont fait l'objet d'actes de spoliation ou ont été illicitement enlevés de leurs territoires,

ATTENDU QUE des biens ont été ou pourront être transférés, liquidés ou livrés conformément aux Accords et à la Declaration précités,

ATTENDU QU' il apparait désirable de constater par voie de législation le transfert de la propriété desdits biens et de définir certaines conséquences juridiques de ce transfert,

En consequence, afin d'écarter tout doute concernant les droits de propriété et d'éviter des différends et des procédures sans fondement;

Le Conseil de la Haute Commission Alliée édicte ce qui suit:

### Article 1

1. Les dispositions de la présente Loi s'étendent aux biens suivants:

(a) tout bien qui, à la date d'entrée en vigueur de la présente Loi ou avant cette date, était propriété allemande et situé dans un pays étranger et qui, postérieurement au 1er septembre 1939, a été ou sera transféré ou liquidé, conformément à la législation de ce pays, ou conformément à la législation d'un autre pays à la suite d'un accord conclu avec le premier pays,

   (i) en vertu des dispositions prises en raison de la guerre contre l'Allemagne par le gouvernement de tout pays ayant adhéré à la Déclaration des Nations-Unies du 1er janvier 1942, ou

   (ii) en vertu de tout accord, convention ou traité concernant la disposition des avoirs allemands à l'étranger, qui a été ou sera conclu avec la participation de la France, du Royaume-Uni et des États-Unis d'Amérique, ou

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## LAW No. 63

### CLARIFYING THE STATUS OF GERMAN EXTERNAL ASSETS AND OF OTHER PROPERTY TAKEN BY WAY OF REPARATION OR RESTITUTION

WHEREAS International agreements have been entered into by the Allied Powers with respect to the liquidation of German external assets and the removal of property from Germany for the purpose of reparation,

WHEREAS the Declaration of London of January 5, 1943, reserved the rights of countries occupied by Germany during the war to the restitution of property which was looted or wrongfully removed from their territories,

WHEREAS property has been or may be transferred, liquidated or delivered in accordance with the aforesaid agreements and declaration and

WHEREAS it appears expedient to give recognition by legislation to, and to define certain legal consequences of, the divesting of title to the aforesaid property,

NOW THEREFORE for the purpose of quieting title and of preventing unwarranted disputes and litigations;

The Council of the Allied High Commission enacts as follows:

### Article 1

1. The provisions of this Law extend to the following property:

(a) any property which, on or prior to the effective date of this Law, was located in any foreign country and German-owned and which, after September 1, 1939, has been or will be transferred or liquidated under the law of such country, or under the law of any other country by agreement with the former country

   (i) pursuant to measures taken in connection with the war against Germany by the government of any country which has adhered to the United Nations Declaration of January 1, 1942, or

   (ii) pursuant to any agreement, accord or treaty regarding the disposition of German external assets which has been or will be concluded with the participation of France, the United Kingdom and the United States of America, or

(iii) en vertu des mesures prises pour le règlement de créances contre l'Allemagne, ou

(iv) en vertu des mesures de réparations, au Japon ou à Tanger;

b) tout bien qui, postérieurement au 8 mai 1945, a été ou sera transféré ou livré au titre des réparations ou des restitutions, en provenance des territoires allemands soumis au contrôle des Autorités britanniques, françaises ou américaines, à tout gouvernement, à l'Agence Interalliée des Réparations ou à tout autre organisme chargé de la disposition des biens allemands.

2. Les biens visés au paragraphe 1 (a) ne comprennent pas:

a) les titres émis en Allemagne, ni les titres de propriété se rapportant à des biens situés en Allemagne, ni les effets de commerce payables par un débiteur ayant sa résidence ou son siège en Allemagne, à moins que ces titres ou effets ne soient libellés en monnaie non allemande;

b) les titres émis par un débiteur allemand si les documents constituant la preuve de l'obligation étaient situés en Allemagne le 1er janvier 1945;

c) tout bien introduit dans un pays étranger postérieurement au 8 mai 1945 à l'occasion d'opérations commerciales intervenues entre ce pays étranger et l'Allemagne, si ces opérations étaient alors autorisées par la législation en vigueur en Allemagne, ainsi que tout bien acquis avec le produit ou par l'utilisation d'un bien ainsi introduit.

### Article 2

1. Les droits, titres et intérêts des anciens propriétaires se rapportant aux biens auxquels s'étendent les dispositions de la présente Loi seront considérés éteints

en ce qui concerne les biens visés au paragraphe 1 (a) de l'Article 1, à la date du transfert ou de la liquidation;

en ce qui concerne les biens transférés ou livrés au titre des restitutions et visés au paragraphe 1 (b) de l'Article 1, à la date de délivrance aux pays attributaires;

en ce qui concerne les biens transférés ou livrés au titre des réparations et visés au paragraphe 1 (b) de l'Article 1, à la date de livraison effec-

(iii) pursuant to measures taken in satisfaction of claims against Germany, or

(iv) pursuant to reparation measures in Japan or Tangier;

(b) any property which, after May 8, 1945, has been or will be transferred or delivered by way of reparation or restitution from German territory under the control of British French or United States authorities to any government, the Inter-Allied Reparation Agency, or any other agency responsible for the disposal of German property.

2. The property described in paragraph 1 (a) does not include:

(a) securities issued in Germany, instruments of title relating to property located in Germany or commercial instruments payable by an obligor residing or having its situs in Germany unless such securities or instruments are denominated in non-German currency, or

(b) securities issued by a German obligor, if the documents evidencing the obligation were located in Germany on January 1, 1945, or

(c) any property brought into a foreign country subsequent to May 8, 1945 in the course of commerce between such foreign country and Germany, if such commerce was then permitted by legislation applicable in Germany, or any property acquired with the proceeds of or through the use of any such property.

### Article 2

1. All rights title or interests of former owners to or in property to which this Law extends shall be deemed to be extinguished —

(a) in the case of property within the purview of Article 1, paragraph 1 (a), at the date of transfer or liquidation;

(b) in the case of property transferred or delivered by way of restitution within the purview of Article 1, paragraph 1 (b), at the date of release to the claimant country;

(c) in the case of property transferred or delivered by way of reparation within the purview of Article 1 paragraph 1 (b), at the date of the actual

tive ou au cas où il n'y a pas eu de livraison effective, à la date de l'inventaire portant évaluation au titre des réparations.

2. Les dispositions du présent Article ne modifient pas les droits, titres et intérêts que le transfert ou la liquidation ou la livraison n'avaient pas pour objet de transférer.

### Article 3

Aucune réclamation ou action fondée sur le transfert, la liquidation ou la livraison de biens auxquels s'étendent les dispositions de la présente Loi, et aucune réclamation ou action se rapportant à un tel transfert ou à de telles liquidations ou livraisons, ne sera recevable:

(a) à l'encontre de toute personne ayant transféré ou acquis la propriété de tels biens, ou à l'égard de ces biens.

(b) à l'encontre de tout organisme international, du gouvernment de tout pays étranger ou de toute personne agissant conformément aux instructions d'un tel organisme ou d'un tel gouvernement.

### Article 4

Au sens de la présente Loi:

(a) l'expression "pays étranger" désigne tous les pays, à l'exception de l'Allemagne et des pays énumérés dans la liste annexée à la présente Loi;

(b) le terme "Allemagne" désigne le territoire de l'ancien Reich au 31 décembre 1937;

(c) le terme "biens" s'étend à tout bien corporel ou incorporel, mobilier ou immobilier;

(d) le terme "date de livraison effective" figurant à l'Article 2, désigne la date indiquée sur l'accusé de réception signé pour chaque article par un représentant de la nation attributaire.

### Article 5

Les Articles II et III de la Loi No 5* du Conseil de Contrôle et le Règlement No 1** de la Commission des Avoirs Allemands à l'Étranger sont privés d'effet

delivery of such property, or where there has been no actual delivery, at the date shown in the inventory determining the valuation for the purpose of reparation.

2. The provisions of this Article shall not affect any right, title or interest which the transfer, liquidation or delivery did not purport to divest.

### Article 3

No claim or action based on or arising out of the transfer, liquidation or delivery of property to which this Law extends shall be admissible:

(a) against any person who has transferred or acquired title to or possession of such property or, against such property.

(b) against any international agency, any government of a foreign country or any person acting in conformity with the instructions of such agency or government.

### Article 4

For the purposes of this Law:

(a) the term "foreign country" means any country except Germany and the countries listed in the Schedule to this Law.

(b) the term "Germany" means the territory of the former Reich on December 31, 1937;

(c) the term "property" includes all tangible or intangible, movable or immovable property;

(d) the term "date of actual delivery" means the date shown on the receipt for individual items signed by a representative of the recipient government.

### Article 5

Articles II and III of Control Council Law No. 5* and Regulation No. 1** of the German External Property Commission are hereby deprived of effect in the terri-

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* J. O. du Conseil de Contrôle No 2, page 27.

** J. O. du Conseil de Contrôle No 8, page 160.

* Official Gazette of the Control Council for Germany No. 2, page 27.

** Official Gazette of the Control Council for Germany No. 8, page 160.

sur le territoire de la République Fédérale en ce qui concerne les avoirs dépendant de la juridiction de tous pays autres que ceux qui sont énumérés dans la liste annexée à la présente Loi.

### Article 6

1. La Haute Commission Alliée peut édicter des règlements pour l'application de la présente Loi.

2. La Haute Commission Alliée peut modifier la liste annexée à la présente Loi par voie de décision. Il peut être prévu, aux termes d'une décision portant retrait d'un pays de la liste, que ce pays ne sera pas considéré comme un pays étranger au sens de la présente Loi.

Fait à
BONN, Petersberg, le 31 Août 1951.

Au nom du Conseil
de la
Haute Commission Alliée

JOHN J. McCLOY

Haut Commissaire des États-Unis
d'Amérique en Allemagne
Président

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### LISTE ANNEXÉE À LA LOI No 63

Autriche

Bulgarie

Finlande

Hongrie

Pologne

Portugal

Roumanie

Suisse

Trieste

Turquie

tory of the Federal Republic so far as they relate to assets subject to the jurisdiction of countries other than those listed in the Schedule to this Law.

### Article 6

1. The Allied High Commission may issue regulations for the implementation of this Law.

2. The Allied High Commission may issue decisions modifying the Schedule to this Law. Any decision which removes a country from the Schedule may provide that such country shall not be considered as a foreign country within the meaning of this Law

Done at
BONN, Petersberg, on 31 August 1951.

On behalf of the Council
of the
Allied High Commission

JOHN J. McCLOY

United States High Commissioner
for Germany
Chairman

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### SCHEDULE

Austria

Bulgaria

Finland

Hungary

Poland

Portugal

Rumania

Switzerland

Trieste

Turkey

## Annex 16

# CONVENTION ON THE SETTLEMENT OF MATTERS ARISING OUT OF THE WAR AND THE OCCUPATION OF 26 MAY 1952 AS AMENDED ON 23 OCTOBER 1954

# Convention on the Settlement of Matters Arising out of the War and the Occupation

(as amended by Schedule IV to the Protocol on the Termination
of the Occupation Regime in the Federal Republic of Germany,
signed at Paris on 23 October 1954)

# Convention sur le Règlement de Questions issues de la Guerre et de l'Occupation

(texte amendé conformément à l'Annexe IV
du Protocole sur la Cessation du Régime d'Occupation
dans la République Fédérale d'Allemagne,
signé à Paris le 23 Octobre 1954)

THE UNITED STATES OF AMERICA,

THE UNITED KINGDOM
OF GREAT BRITAIN
AND NORTHERN IRELAND,

THE FRENCH REPUBLIC
and
THE FEDERAL REPUBLIC
OF GERMANY

Agree as follows:

## CHAPTER ONE

### General Provisions

### Article 1

1. The Federal and Land authorities shall have the power, in accordance with their respective competences under the Basic Law of the Federal Republic, to repeal or amend legislation enacted by the Occupation Authorities, except as otherwise provided in the Convention on Relations between the Three Powers and the Federal Republic of Germany or any of the related Conventions listed in Article 8 thereof. Until such repeal or amendment, legislation enacted by the Occupation Authorities shall remain in force. Legislation enacted by the Control Council shall not be subject to repeal or amendment. Legislation by which the provisional boundaries of the Federal Republic have been established, or which is required to be maintained in force by other provisions of the Convention on Relations between the Three Powers and the Federal Republic of Germany or any of the related Conventions, may only be amended or repealed with the consent of the Three Powers.

2. The Three Powers hereby delegate to the Federal Republic the right to deprive of effect within its territory, after consultation in each case with the Three Powers, all such legislation of the Control Council as is not required to be maintained in force by other provisions of the Convention on Relations between the Three Powers and the Federal Republic of Ger-

LA REPUBLIQUE FRANCAISE,

LES ETATS-UNIS D'AMERIQUE,

LE ROYAUME-UNI
DE GRANDE-BRETAGNE
ET D'IRELAND DU NORD
et
LA REPUBLIQUE FEDERALE
D'ALLEMAGNE

conviennent des dispositions suivantes:

## CHAPITRE PREMIER

### Dispositions générales

### Article 1

1. — Les autorités fédérales et les autorités de Land ont le pouvoir, conformément à leur compétence respective en vertu de la Loi Fondamentale de la République Fédérale, d'abroger ou d'amender la législation édictée par les Autorités d'Occupation, sauf dispositions contraires de la Convention sur les Relations entre les Trois Puissances et la République Fédérale d'Allemagne ou de l'une quelconque des Conventions rattachées énumérées à l'Article 8 de ladite Convention. Jusqu'à ce qu'intervienne une telle abrogation ou un tel amendement, la législation édictée par les Autorités d'Occupation demeure en vigueur. La législation édictée par le Conseil de Contrôle ne peut faire l'objet d'abrogation ni d'amendement. La législation par laquelle les limites territoriales provisoires de la République Fédérale ont été établies, ou celle dont le maintien en vigueur est exigé par toute autre disposition de la Convention sur les Relations entre les Trois Puissances et la République Fédérale d'Allemagne ou de l'une quelconque des Conventions rattachées, ne pourra être amendée ou abrogée qu'avec le consentement des Trois Puissances.

2. — Les Trois Puissances délèguent à la République Fédérale le droit de priver d'effet sur son territoire, après avoir consulté les Trois Puissances dans chaque cas particulier, toute la législation du Conseil de Contrôle dont le maintien en vigueur n'est pas exigé par toute autre disposition de la Convention sur les Relations entre les Trois Puissances et la République

many or any of the related Conventions or as shall not have been required to be maintained in force by the Three Powers in the exercise of their rights relating to Berlin and to Germany as a whole, including unification of Germany and a peace settlement, referred to in the Convention on Relations between the Three Powers and the Federal Republic of Germany, as listed in a communication on behalf of the Governments of the Three Powers to the Federal Chancellor bearing the date of the signature of the present Convention.

3. The term "legislation" as used in the present Convention includes proclamations, laws, ordinances, decisions (other than Court decisions), directives, regulations, orders, licenses or any other similar enactments which have been officially published. Reference to any specific legislation shall include each and every part thereof, including the preamble, unless otherwise expressly provided.

4. The official text or texts of legislation referred to in this Article shall be the text or texts which was or were official at the time of enactment.

5. The term "Occupation Authorities" as used in this Chapter means the Control Council, the Allied High Commission, the High Commissioners of the Three Powers, the Military Governors of the Three Powers, the Armed Forces of the Three Powers in Germany, and organizations and persons exercising power on their behalf or, in the case of international organizations and organizations representing other Powers (and the members of such organizations), acting with their authorization, and auxiliary contingents of other Powers serving with the Armed Forces of the Three Powers.

### Article 2

1. All rights and obligations created or established by or under legislative, administrative or judical action of the Occupation Authorities are and shall remain valid for all purposes under German law whether or not their creation or establishment was in conformity with other legislation. Such rights and obligations shall be subject without dicrimination to the same future legislative, judical and administrative measures as similar rights and obligations created or established by or under German municipal law.

2. All rights and obligations arising under the treaties and the international agreements listed in the enclosure

Fédérale d'Allemagne ou de l'une quelconque des Conventions rattachées, ou dont le maintien en vigueur n'a pas été exigé par les Trois Puissances dans l'exercice de leurs droits en ce qui concerne Berlin et l'Allemagne dans son ensemble, y compris l'unification de l'Allemagne et un règlement de paix, visés dans la Convention sur les Relations entre les Trois Puissances et la République Fédérale d'Allemagne, et qui est énumérée dans une communication adressée au Chancelier Fédéral, au nom des Gouvernements des Trois Puissances, et portant la date de la signature de la présente Convention.

3. — Le terme «législation» utilisé dans la présente Convention comprend les proclamations, les lois, les ordonnances, les décisions (autres que les décisions judiciaires), les directives, les règlements, les arrêtés et ordres, les licences ou tout autre texte analogue, qui ont été officiellement publiés. Sauf dispositions contraires, toute référence à une législation particulière comprendra l'ensemble du texte de cette législation, y compris le préambule.

4. — Le ou les textes officiels de la législation visée au présent Article seront celui ou ceux qui étaient officiels au moment où cette législation a été édictée.

5. — L'expression «Autorités d'Occupation», utilisée dans le présent Chapitre, désigne le Conseil de Contrôle, la Haute Commission Alliée, les Hauts Commissaires des Trois Puissances, les Gouverneurs Militaires des Trois Puissances, les Forces Armées des Trois Puissances en Allemagne, ainsi que les organisations et personnes exerçant le pouvoir en leur nom ou, dans le cas d'organisations internationales et d'organisations représentant d'autres Puissances (et de membres de ces organisations), agissant avec leur autorisation, ainsi que les contingents auxiliaires d'autres Puissances servant avec les Forces Armées des Trois Puissances.

### Article 2

1. — Tous les droits et obligations créés ou institués par des mesures législatives, judiciaires ou administratives prises par les Autorités d'Occupation, ou en vertu de telles mesures, sont et demeureront valables à tous égards en droit allemand, qu'ils aient été ou non créés ou institués conformément à d'autres textes législatifs. Ces droits et obligations seront soumis, sans discrimination, aux mêmes mesures d'ordre législatif, judiciaire et administratif qui seront prises à l'avenir, que les droits et obligations similaires créés ou institués par le droit interne allemand ou en vertu de ce droit.

2. — Tous les droits et obligations résultant des traités et des accords internationaux énumérés dans la liste

with the communication of the Allied High Commissioners on behalf of the Governments of the Three Powers to the Federal Chancellor bearing the date of the signature of the present Convention and concluded on behalf of one or more of the three Western Zones of Occupation by the Occupation Authorities or by any one or more of the Governments of the Three Powers before the entry into force of the present Convention are and shall remain valid as though they had arisen under effective treaties and international agreements concluded by the Federal Republic.

### Article 3

1. No person shall be prosecuted or prejudiced in his civil rights or economic position by the action of German courts or authorities solely on the ground that he has, prior to the entry into force of the present Convention, sympathized with or aided the cause of the Three Powers, or their policies or interests, or furnished information or services to the forces, authorities, or agencies of any one or more of the Three Powers, or to any person acting under the authority of any of them. The same shall apply in favour of persons who, prior to the entry into force of the present Convention, have shown sympathy to, or aided or furnished with information or services, the Allies of the Three Powers in their common cause. The German authorities shall apply all means at their disposal to ensure that the objectives of this paragraph are attained.

2. Except as provided in paragraph 3 of this Article, or by special agreement between the Governments of the Three Powers or the Power concerned and the Federal Government, German courts and authorities shall have no jurisdiction in any criminal or non-criminal proceedings relating to an act or omission which occurred before the date of entry into force of the present Convention, if immediately prior to such date German courts and authorities were without jurisdiction with respect to such act or omission whether *ratione materiae* or *ratione personae*.

3. Subject to the provisions of paragraph 1 of this Article and to any other relevant provision of the Convention on Relations between the Three Powers and the Federal Republic of Germany, or of the related Conventions, German courts may exercise such jurisdiction as they have under German law in respect of:

jointe à la communication adressée au Chancelier Fédéral par les Hauts Commissaires au nom des Gouvernements des Trois Puissances et portant la date de la signature de la présente Convention, et conclus pour le compte de l'une ou de plusieurs des trois Zones occidentales d'occupation par les Autorités d'Occupation ou l'un ou plusieurs des Gouvernements des Trois Puissances avant l'entrée en vigueur de la présente Convention, sont et demeureront valables comme s'ils résultaient de traités et d'accords internationaux valablement conclus par la République Fédérale.

### Article 3

1. — Aucune personne ne sera poursuivie ou ne sera lésée dans ses droits civiques ou sa situation économique par l'action de tribunaux allemands ou d'autorités allemandes, du seul fait que, avant l'entrée en vigueur de la présente Convention, elle a manifesté des sentiments de sympathie pour la cause, la politique ou les intérêts des Trois Puissances, ou leur a apporté son aide, ou a fourni des renseignements ou rendu des services aux Forces, aux Autorités, ou à tout organisme de l'une ou de plusieurs des Trois Puissances ou à toute personne agissant sous l'autorité de l'une de ces Puissances. Les mêmes dispositions s'appliqueront en faveur des personnes qui, avant l'entrée en vigueur de la présente Convention, auront manifesté des sentiments de sympathie envers les alliés des Trois Puissances dans leur cause commune, ou leur auront apporté leur aide, ou leur auront fourni des renseignements ou rendu des services dans cette même cause. Les autorités allemandes emploieront tous les moyens dont elles disposent pour assurer la réalisation des objectifs visés au présent paragraphe

2. — Exception faite des dispositions prévues au paragraphe 3 du présent Article ou dans un accord spécial conclu entre les Gouvernements des Trois Puissances ou le Gouvernement de la Puissance intéressée et le Gouvernement Fédéral, les tribunaux allemands et les autorités allemandes ne seront pas compétents pour connaître d'instances, pénales ou non, relatives à un acte ou une omission intervenu avant la date d'entrée en vigueur de la présente Convention si, immédiatement avant cette date, les tribunaux allemands et les autorités allemandes n'avaient pas compétence à l'égard de cet acte ou de cette omission soit, *ratione materiae*, soit *ratione personae*.

3. — Sous réserve des dispositions du paragraphe 1 du présent Article et de toutes autres dispositions applicables de la Convention sur les Relations entre les Trois Puissances et la République Fédérale d'Allemagne ou de l'une quelconque des Conventions rattachées, les tribunaux allemands pourront exercer la compétence qu'ils détiennent en vertu du droit allemand:

(a) non-criminal proceedings based on private law:

(i) against juristic persons, if the jurisdiction of German courts was previously excluded solely on the ground that such juristic persons were subject to the control of the Occupation Authorities under SHAEF and Military Government Laws No. 52 on Blocking and Control of Property, Control Council Law No. 9 Providing for the Seizure of Property Owned by I. G. Farbenindustrie and the Control thereof, or Allied High Commission Law No. 35 on Dispersion of Assets of I.G. Farbenindustrie A.G.;

(ii) against natural persons, unless such proceedings arise out of, or concern acts or omissions in the course of the performance of, duties or services for the Occupation Authorities, or unless they arise from claims referred to in Article 3 of Chapter Nine of the present Convention. Maintenance cases shall become subject to the jurisdiction of German courts, however, only to the extent to which maintenance is claimed in respect of a period commencing after the entry into force of the present Convention;

(b) criminal proceedings against natural persons, unless investigation of the alleged offence was finally completed by the prosecuting authorities of the Power or Powers concerned, or unless such offence has been committed in the performance of duties or services for the Occupation Authorities.

Whenever in any criminal or non-criminal proceedings referred to in this paragraph a question arises whether or not a person has acted in the performance of duties or services for the Occupation Authorities, or whether or not the prosecuting authorities of the Power or Powers concerned have finally completed the investigation of an alleged offence, the German court shall accept a certificate of the Ambassador, or in his absence the Chargé d'affaires, of the Power concerned as conclusive proof of such question, to the extent covered by such certificate.

## Article 4

1. No tribunals shall be maintained by the Three Powers in the Federal territory except as specifically provided in the present Convention or

(a) en matière non pénale, s'il s'agit d'instances de droit privé:

(i) contre des personnes morales, si la compétence des tribunaux allemands n'était pas reconnue auparavant du seul fait que ces personnes morales étaient sous le contrôle des Autorités d'Occupation en vertu des Lois N° 52 du SHAEF et des Gouvernements Militaires sur le blocage et le contrôle des biens, de la Loi N° 9 du Conseil de Contrôle relative à la saisie des biens appartenant à l'I.G. Farbenindustrie et au contrôle desdits biens, ou de la Loi N° 35 de la Haute Commission Alliée sur la dispersion des biens de l'I.G. Farbenindustrie A.G.;

(ii) contre des personnes physiques, à moins que ces instances ne soient nées de l'accomplissement de fonctions ou de services auprès des Autorités d'Occupation ou ne se rapportent à des actes ou omissions intervenus au cours de l'accomplissement de ces fonctions ou services ou résultent de réclamations visées à l'Article 3 du Chapitre Neuvième de la présente Convention. Toutefois, les instances en matière de pensions alimentaires ne relèveront de la compétence des tribunaux allemands ou des autorités allemandes que dans la mesure où la pension sera demandée pour la période postérieure à l'entrée en vigueur de la présente Convention;

(b) en matière pénale, contre des personnes physiques, à moins que les Autorités de la Puissance ou des Puissances intéressées chargées de la poursuite n'aient pas complètement terminé les enquêtes concernant l'infraction reprochée ou que cette infraction n'ait été commise dans l'accomplissement de fonctions ou de services auprès des Autorités d'Occupation.

Chaque fois que, dans une instance pénale ou non pénale visée au présent paragraphe, la question se pose de savoir si une personne a agi au cours de l'accomplissement de fonctions ou de services auprès des Autorités d'Occupation, ou si les Autorités de la Puissance ou des Puissances intéressées chargées des poursuites ont complètement terminé leurs enquêtes concernant l'infraction reprochée, le tribunal allemand doit accepter, comme preuve décisive en la matière, dans la mesure où il s'y rapporte, un certificat délivré par l'Ambassadeur ou, à défaut, par le chargé d'affaires de la Puissance intéressée.

## Article 4

1. — Les Trois Puissances ne maintiendront aucun tribunal sur le territoire fédéral, sauf dans les cas expressément prévus dans la présente

except tribunals exercising jurisdiction as contemplated in the Convention on Relations between the Three Powers and the Federal Republic of Germany or any of the related Conventions.

2. For the transitional period referred to in paragraph 3 of this Article, the United States Court and Court of Appeals of the Allied High Commission for Germany, established by Law No. 20 of the United States High Commissioner, the Courts of the Allied High Commission for Germany, British Zone, established by Military Government Ordinance No. 68 (amended 2) and Ordinances No. 222 and 244 of the United Kingdom High Commissioner, and the French Tribunals of the Allied High Commission for Germany, regulated by Ordinance No. 242 of the French High Commissioner, may continue to exercise jurisdiction under legislation of the Allied High Commission and of the High Commissioners to the extent necessary:

(a) to conclude any business before them on the entry into force of the present Convention;

(b) to make a decision in any criminal or non-criminal proceedings, other than criminal proceedings against a German national (within the meaning of German law), based on an act or omission which occurred before the date of entry into force of the present Convention and which was not immediately prior to that date subject to the jurisdiction of the German courts, if such proceedings are instituted within ninety days after the entry into force of the present Convention;

and shall continue to apply the applicable law in force immediately prior to the entry into force of the present Convention. The Federal Republic untertakes that at the request of any one of the Three Powers investigations will be made by the appropriate German authorities regarding alleged violations by German nationals (within the meaning of German law) of legislation of the Occupation Authorities, and that criminal proceedings will be instituted where the investigations show such proceedings to be warranted.

3. The jurisdiction referred to in paragraph 2 of this Article shall, however, terminate ten months after the date of entry into force of the present Convention in the case of appellate tribunals, and six months after that date in the case of other tribunals, except that such tribunals may complete proceedings pending on such termination dates where this appears advisable in view of the status of the

Convention et à l'exception des tribunaux exerçant une compétence conformément à la Convention sur les Relations entre les Trois Puissances et la République Fédérale d'Allemagne ou à l'une quelconque des Conventions rattachées.

2. — Au cours de la période transitoire visée au paragraphe 3 du présent Article, le Tribunal américain et la Cour d'Appel américaine de la Haute Commission Alliée en Allemagne, institués par la Loi N° 20 du Haut Commissaire Américain, les Tribunaux de la Haute Commission Alliée en Allemagne, Zone britannique, institués par l'Ordonnance du Gouvernement Militaire britannique N° 68 (2ème Amendement) et les Ordonnances N^os^ 222 et 244 du Haut Commissaire Britannique, et les Tribunaux français de la Haute Commission Alliée en Allemagne, régis par l'Ordonnance N° 242 du Haut Commissaire Français, pourront continuer à exercer leur compétence en vertu de la législation de la Haute Commission Alliée et des Hauts Commissaires dans la mesure nécessaire pour:

(a) mener à son terme toute affaire en instance devant eux lors de l'entrée en vigueur de la présente Convention;

(b) statuer sur toutes instances, pénales ou non, autres que des instances pénales dirigées contre un ressortissant allemand (au sens de la loi allemande), fondées sur un acte ou une omission intervenu avant la date d'entrée en vigueur de la présente Convention et qui, immédiatement avant cette date, ne relevait pas de la compétence des tribunaux allemands, si ces instances ont été introduites dans un délai de quatre-vingt-dix jours après l'entrée en vigueur de la présente Convention.

Ils continueront à appliquer le droit applicable en vigueur immédiatement avant l'entrée en vigueur de la présente Convention. La République Fédérale s'engage à ce que des enquêtes soient entreprises par les autorités allemandes compétentes, à la demande de l'une des Trois Puissances, à l'égard des infractions à la législation des Autorités d'Occupation qui sont présumées avoir été commises par des ressortissants allemands (au sens de la loi allemande), et à ce que des instances pénales soient introduites lorsque l'enquête prouve que l'introduction de telles instances est justifiée.

3. — Toutefois, la compétence visée au paragraphe 2 du présent Article prendra fin dix mois après la date d'entrée en vigueur de la présente Convention, dans le cas des juridictions d'appel, et six mois après cette date, dans le cas des autres juridictions. Ces tribunaux peuvent cependant mener à leur terme les procédures encore en instance aux dates limites prévues, lorsque cela semble

proceedings and of the interests of the persons concerned. With a view to completing all matters falling within their jurisdiction, insofar as possible, within the prescribed periods, the courts referred to in paragraph 2 of this Article may transfer any proceedings pending before them to competent German courts whenever the status of the proceedings and the interests of the persons concerned shall permit. In particular, the tribunals shall consider the possibility of such transfer in all criminal proceedings pending on the entry into force of the present Convention in which a German national (within the meaning of German law) is a defendant. The German court to which such transfer is made shall apply the applicable substantive law referred to in paragraph 2 of this Article.

4. The legislation referred to in paragraph 2 of this Article shall be maintained in force for such period as is necessary to effect the purposes of that paragraph.

### Article 5

1. All judgments and decisions in non-criminal matters heretofore or hereafter rendered in Germany by any tribunal or judicial authority of the Three Powers or any of them shall remain final and valid for all purposes under German law, shall be treated as such by German courts and authorities and shall, on the application of a party, be enforced by them in the same manner as judgments and decisions of German courts and authorities.

2. Finality (Rechtskraft) shall, if it does not appear from a certified copy of the judgment, be conclusively proved by a certificate of the appropriate authorities of the Power concerned.

3. In connection with the enforcement of judgments objections affecting a claim reduced to judgment may be asserted by proceedings before the competent German court under Section 767 of the German Code of Civil Procedure.

### Article 6

1. There is hereby established a Mixed Board (referred to in this Article as "the Board"). The task of the Board will be, without calling in question the validity of the convictions, to make recommendations for the termination or reduction of sentences, or for parole, in respect of persons convicted by a tribunal of an Allied Power of crimes against humanity or against the laws and usages of war or of crimes committed during the war, commonly referred to as "war crimes" and confined by the Three

souhaitable en raison de l'état de la procédure et dans l'intérêt des parties en cause. Afin que soient achevées, dans la mesure du possible, toutes les affaires de leur compétence dans les délais prescrits, les tribunaux visés au paragraphe 2 du présent Article peuvent transférer toute procédure en instance devant eux aux tribunaux allemands appropriés chaque fois que l'état de la procédure et les intérêts des parties en cause le permettront. En particulier, les tribunaux examineront la possibilité de transférer toutes les procédures pénales contre des ressortissants allemands (au sens de la loi allemande) encore en instance lors de l'entrée en vigueur de la présente Convention. Les tribunaux allemands auxquels ces procédures seront transférées appliqueront les dispositions de fond du droit applicable visé au paragraphe 2 du présent Article.

4. — La législation visée au paragraphe 2 du présent Article sera maintenue en vigueur pendant la durée nécessaire à la réalisation des objectifs mentionnés dans ce paragraphe.

### Article 5

1. — Tous les jugements et décisions en matière non pénale, qui ont été ou qui seront rendus en Allemagne par un tribunal ou par une autorité judiciaire des Trois Puissances ou de l'une d'entre elles, demeureront définitifs et valables à tous égards en droit allemand et seront traités comme tels par les tribunaux allemands et les autorités allemandes, et, à la demande de l'une des parties, exécutés par eux de la même manière que les jugements et les décisions des tribunaux allemands et des autorités allemandes.

2. — Le caractère définitif (Rechtskraft) sera, dans la mesure où il ne ressort pas de l'expédition du jugement, prouvé d'une manière décisive par un certificat émanant des autorités compétentes de la Puissance intéressée.

3. — En ce qui concerne l'exécution des jugements, toute opposition contre les droits constatés par un jugement doit être présentée au moyen d'une instance introduite devant un tribunal allemand approprié, conformément à l'Article 767 du Code allemand de Procédure Civile.

### Article 6

1. — Il est institué une Commission Mixte (dénommée dans le présent Article « la Commission »), ayant pour fonction de présenter des recommandations qui ne pourront pas mettre en cause la validité des condamnations, au sujet de la remise ou de la réduction de peine et de la libération conditionnelle en ce qui concerne les personnes condamnées par des tribunaux d'une Puissance Alliée pour crimes contre l'humanité ou contre les lois et usages de la guerre, ou pour crimes commis pendant la guerre, communé-

Powers in prisons in the Federal Republic on the entry into force of the present Convention.

2. The Board shall consist of six members, of whom one shall be appointed by the Government of each of the Three Powers and three by the Federal Government. The members of the Board shall be independent persons not exercising other official functions except as a judge or university teacher and not subject to instructions of the appointing Governments in formulating their recommendations. No person may be appointed who has participated in any manner in any war crimes trial.

3. (a) The right to terminate or reduce sentences and to grant parole in respect of persons referred to in paragraph 1 of this Article shall be exercisable by the Power which imposed the sentence.

(b) The right shall not be exercised unless the Board has previously made a recommendation. A unanimous recommendation of the Board shall be binding upon the Power which imposed the sentence.

(c) Save on matters dealt with in paragraphs 5 and 8 of this Article, the Board shall act only at the request of one of the Four Governments relating to a particular case or on the receipt of a petition by or on behalf of a person referred to in paragraph 1

4. The Three Powers retain the rights heretofore held and exercised by them relating to the custody and carrying out of sentences of the persons referred to in paragraph 1 of this Article and will continue to exercise such rights until the Federal Republic is in a position to accept the custody of such persons.

5. The Federal Republic undertakes that at the time when the Three Powers transfer custody of the persons referred to in paragraph 1 of this Article to it, it will continue to confine such persons for the remainder of their sentences, as then in effect or as thereafter modified by the procedure provided in this Article, under the same conditions that govern their detention on the date of such transfer of custody. Changes in those conditions after such date shall be made only in accordance with decisions of the Board. In these matters the Board's decisions shall be final.

ment dénommés « crimes de guerre », et détenues par les Trois Puissances à l'intérieur de la République Fédérale à la date de l'entrée en vigueur de la présente Convention.

2. — La Commission est composée de six membres, dont un est nommé par chacun des Gouvernements des Trois Puissances, et trois par le Gouvernement Fédéral. Les membres de la Commission doivent être des personnes indépendantes, n'exerçant pas d'autres fonctions officielles que celles de juge ou de professeur d'Université, et ne recevant pas, de la part des Gouvernements qui les ont nommés, d'instructions quant aux recommandations qu'ils sont appelés à formuler. Les personnes qui ont participé, de quelque manière que ce soit, au jugement des crimes de guerre ne peuvent être nommées membres de la Commission.

3. — (a) A l'égard des personnes visées au paragraphe 1 du présent Article, le droit de remettre ou de réduire les peines et d'accorder la libération conditionnelle est exercé par la Puissance qui a prononcé les condamnations.

(b) Ce droit ne peut être exercé sans que la Commission ait, au préalable, présenté une recommandation. Les recommandations unanimes de la Commission lient la Puissance qui a prononcé les condamnations.

(c) Sauf en ce qui concerne les questions faisant l'objet des paragraphes 5 et 8 du présent Article, la Commission ne peut se prononcer que sur une requête de l'un des quatre Gouvernements relative à un cas particulier, ou sur un recours présenté par une personne visée au paragraphe 1 ou en son nom.

4. — Les Trois Puissances se réservent les droits antérieurement exercés ou détenus par elles en ce qui concerne la garde des personnes visées au paragraphe 1 du présent Article et l'exécution des condamnations prononcées contre ces personnes, et continueront à exercer ces droits jusqu'à ce que la République Fédérale soit en mesure d'accepter la garde de ces personnes.

5. — La République Fédérale s'engage à continuer, lorsque les Trois Puissances lui transféreront la garde des personnes visées au paragraphe 1 du présent Article, à détenir ces personnes pendant le reliquat de leurs peines, telles que celles-ci seront alors applicables ou telles qu'elles pourront être ultérieurement modifiées selon la procédure prévue au présent Article, dans les mêmes conditions que celles qui régissent leur détention à la date du transfert de la garde. Aucun changement ne pourra être, après cette date, apporté à ces conditions de détention, si ce n'est en conformité avec une décision de la Commission qui, en cette matière, se prononcera en dernier ressort.

6. After the Board has been constituted, its members shall have free access to the institutions in which the persons referred to in paragraph 1 of this Article are confined and to such persons themselves.

7. The Board shall act by the vote of a majority of its six members.

8. The Board shall have exclusive power to decide, without reference to Governments, questions of interruption of sentences on compassionate or other grounds in accordance with principles and rules of procedure adopted by it. Pending the adoption of such principles and rules, the Board shall continue to apply the existing practices of each of the Three Powers in this field to the persons in the custody of such Power.

9. Notwithstanding the provisions of paragraphs 3 and 8 of this Article, and until the Board shall have commenced to function, each of the Three Powers may continue existing procedures with respect to reduction of sentences, release and interruption of sentences on compassionate or other grounds, without receiving any recommendation from the Board.

10. The rights of the Three Powers referred to in sub-paragraph (a) of paragraph 3 and in paragraph 4 of this Article and, without prejudice to the provisions of sub-paragraph (b) of paragraph 3 and of paragraphs 6 and 8, action taken thereunder shall not be subject to the jurisdiction of the Arbitration Tribunal or of any other tribunal or court.

11. The provisions of Article 7 of this Chapter shall not apply to the matters dealt with in this Article.

### Article 7

1. All judgments and decisions in criminal matters heretofore or hereafter rendered in Germany by any tribunal or judicial authority of the Three Powers or any of them shall remain final and valid for all purposes under German law and shall be treated as such by German courts and authorities.

2. The German authorities will confine in German institutions until the termination of their sentences persons, other than members of the Forces (as defined in the Convention on the Rights and Obligations of Foreign Forces and their Members in the Federal Republic of Germany), who have been or shall be sentenced by, or who are held for trial before, any tribunal referred to in paragraph 1 of this Article.

6. — Après que la Commission aura été constituée, ses membres auront libre accès aux établissements dans lesquels seront détenues les personnes visées au paragraphe 1 du présent Article, ainsi qu'auprès de ces personnes elles-mêmes.

7. — La Commission se prononce à la majorité de ses six membres.

8. — La Commission a le pouvoir exclusif de se prononcer, sans en référer aux Gouvernements, sur les questions d'interruption de peines pour des raisons humanitaires ou autres, conformément aux principes et aux règles de procédure qu'elle pourra adopter. En attendant l'adoption de ces principes et de ces règlements, la Commission continuera à appliquer les pratiques existantes de chacune des Trois Puissances dans ce domaine aux personnes placées sous la garde de cette Puissance.

9. — Nonobstant les dispositions des paragraphes 3 et 8 du présent Article, et jusqu'à ce que la Commission ait commencé à fonctionner, chacune des Trois Puissances pourra continuer à appliquer les procédures actuelles en ce qui concerne les réductions de peines, les libérations et les interruptions de peines pour des raisons humanitaires ou autres sans recevoir aucune recommandation de la Commission.

10. — Les droits des Trois Puissances visés à l'alinéa (a) du paragraphe 3 et au paragraphe 4 du présent Article, et, sans préjudice des dispositions de l'alinéa (b) du paragraphe 3 et des paragraphes 6 et 8, les mesures prises en application de ces droits ne relèvent pas de la compétence du Tribunal d'Arbitrage ou de tout autre tribunal ou instance judiciaire.

11. — Les dispositions de l'Article 7 du présent Chapitre ne s'appliquent pas aux questions traitées dans le présent Article.

### Article 7

1. — Tous les jugements et décisions en matière pénale, qui ont été ou qui seront rendus en Allemagne par un tribunal ou par une autorité judiciaire des Trois Puissances ou de l'une d'entre elles, demeureront définitifs et valables à tous égards en droit allemand, et seront traités comme tels par les tribunaux allemands et les autorités allemandes.

2. — Les autorités allemandes détiendront dans des établissements pénitentiaires allemands, jusqu'à l'expiration de leur peine, les personnes, autres que les membres des Forces (tels qu'ils sont définis dans la Convention relative aux Droits et Obligations des Forces étrangères et de leurs Membres sur le Territoire de la République Fédérale d'Allemagne), qui ont été ou qui seront condamnées par un tribunal visé au paragraphe 1 du présent Article, ou qui sont détenues en instance de jugement devant un tel tribunal.

3. The German authorities shall treat persons confined in German institutions pursuant to paragraph 2 of this Article in accordance with humane penological principles and in the same manner as is prescribed for persons sentenced by, or held for trial before, German courts. The authorities of the Three Powers shall have access to German institutions in which such persons are confined and to such persons themselves.

4. The costs of confinement in German institutions pursuant to this Article shall be borne by the German authorities.

5. There shall be established within thirty days after the entry into force of the present Convention a Mixed Clemency Advisory Board consisting, on a basis of parity, of not less than one member appointed by the Government of each of the Three Powers and not less than three members appointed by the Federal Government. The Board shall sit in panels consisting of one member appointed by the Government of the Power concerned and one of the members appointed by the Federal Government, for the purpose of making recommendations to the Power concerned or the Federal Republic, as required in paragraphs 6 and 7 of this Article, in matters of termination or reduction of sentence, parole, pardon and other acts of clemency regarding persons confined in German institutions pursuant to the provisions of paragraph 2 of this Article.

6. The Federal Republic shall have the exclusive right to make final decisions in all matters of termination or reduction of sentences, parole, pardon and other acts of clemency regarding German nationals (within the meaning of German law) confined, pursuant to paragraph 2 of this Article, in German institutions under German control. The recommendation of the Mixed Clemency Advisory Board established pursuant to paragraph 5 of this Article shall be obtained prior to any such decision. In cases of persons sentenced for offences against Allied personnel or property or against the Allied administration in Germany the Federal Republic shall make decisions in favour of such persons only in accordance with the recommendation of the appropriate panel of the Board.

7. Each of the Three Powers shall have the exclusive right to make final decisions in all matters of

3. — Les autorités allemandes traiteront les personnes détenues dans des établissements pénitentiaires allemands en application du paragraphe 2 du présent Article conformément à des principes pénitentiaires humains et de la même manière que celle qui est prescrite pour les personnes condamnées par des tribunaux allemands ou détenues en instance de jugement devant ces tribunaux. Les Autorités des Trois Puissances auront accès aux établissements pénitentiaires allemands dans lesquels ces personnes seront détenues, et auprès de ces personnes elles-mêmes.

4. — Les frais de la détention dans des établissements pénitentiaires allemands en application du présent Article seront supportés par les autorités allemandes.

5. — Dans un délai de trente jours à compter de l'entrée en vigueur de la présente Convention, il sera institué une Commission Consultative Mixte des Grâces, composée, sur une base paritaire, d'au moins un membre désigné par le Gouvernement de chacune des Trois Puissances et d'au moins trois membres désignés par le Gouvernement Fédéral. La Commission siégera en sous-commissions composées d'un membre désigné par le Gouvernement de la Puissance intéressée et d'un des membres désignés par le Gouvernement Fédéral, afin de soumettre à la Puissance intéressée ou à la République Fédérale, selon le cas, aux termes des paragraphes 6 et 7 du présent Article, des recommandations en matière de remise ou de réduction de peine, de libération conditionnelle, de grâce amnistiante et d'autres mesures de grâce à l'égard des personnes détenues dans des établissements pénitentiaires allemands en application des dispositions du paragraphe 2 du présent Article.

6. — La République Fédérale aura le droit exclusif de prendre des décisions définitives en matière de remise ou de réduction de peine, de libération conditionnelle, de grâce amnistiante et d'autres mesures de grâce à l'égard des ressortissants allemands (au sens de la loi allemande) détenus, en application du paragraphe 2 du présent Article, dans des établissements pénitentiaires allemands sous contrôle allemand. Avant toute décision de cette nature, la Commission Consultative Mixte des Grâces instituée conformément au paragraphe 5 du présent Article devra être appelée à présenter une recommandation. Dans le cas des personnes condamnées pour des infractions commises contre le personnel ou les biens alliés ou contre l'administration alliée en Allemagne, la République Fédérale ne prendra de décisions en faveur de ces personnes que conformément aux recommandations de la sous-commission compétente de la Commission.

7. — Chacune des Trois Puissances aura le droit exclusif de prendre des décisions définitives en matière de

termination or reduction of sentences, parole, pardon and other acts of clemency regarding all persons, other than those referred to in paragraph 6 of this Article, sentenced by its courts and confined, pursuant to paragraph 2 of this Article, in German institutions under German control. The recommendation of the Mixed Clemency Advisory Board established pursuant to paragraph 5 of this Article shall be obtained prior to any such decision.

### Article 8

The following persons shall enjoy immunity from suit within the Federal territory during their terms of office and, after the expiry of their terms of office, shall continue to enjoy such immunity in respect of acts performed in the exercise of their official duties:

(a) members of the tribunals referred to in paragraph 2 of Article 4 of this Chapter;

(b) members of the tribunals, referred to in paragraph 1 of Article 6 of Chapter Three of the present Convention, to which the Supreme Restitution Court succeeds;

(c) members, appointed by any of the Three Powers, of the Mixed Board established by paragraph 1 of Article 6 of this Chapter or of the Mixed Clemency Advisory Board established pursuant to paragraph 5 of Article 7 of this Chapter;

(d) members, appointed by any of the Three Powers, of the Board of Review referred to in paragraph 1 of Article 12 of this Chapter.

During their terms of office they shall also enjoy in the Federal territory the same privileges and immunities as are accorded members of diplomatic missions.

### Article 9

1. The Allied High Commission legislation concerning the reorganization of the German coal mining and iron and steel industries, to the extent that such legislation is in force on the date of the entry into force of the present Convention, shall be maintained in force in so far and so long as deconcentration measures ordered before that date are still to be carried out or claimants are still to be protected.

remise ou de réduction de peine, de libération conditionnelle, de grâce amnistiante et d'autres mesures de grâce à l'égard de toutes personnes, autres que celles visées au paragraphe 6 du présent Article, condamnées par ses tribunaux et détenues, en application du paragraphe 2 du présent Article, dans des établissements pénitentiaires allemands sous contrôle allemand. Avant toute décision de cette nature, la Commission Consultative Mixte des Grâces, instituée conformément au paragraphe 5 du présent Article, devra être appelée à présenter une recommandation.

### Article 8

Les personnes suivantes bénéficient de l'immunité de juridiction sur le territoire fédéral pendant la durée de leur mandat et continuent, après l'expiration de ce mandat, à bénéficier de cette immunité à raison des actes accomplis dans l'exercice de leurs fonctions officielles:

(a) les membres des tribunaux visés au paragraphe 2 de l'Article 4 du présent Chapitre;

(b) les membres des tribunaux, visés au paragraphe 1 de l'Article 6 du Chapitre Troisième de la présente Convention, auxquels succède la Cour Suprême des Restitutions;

(c) les membres, désignés par chacune des Trois Puissances, de la Commission Mixte, créée en vertu du paragraphe 1 de l'Article 6 du présent Chapitre, et de la Commission Consultative Mixte des Grâces, créée en vertu du paragraphe 5 de l'Article 7 du présent Chapitre;

(d) les membres, désignés par chacune des Trois Puissances, de la Commission de Révision visée au paragraphe 1 de l'Article 12 du présent Chapitre.

Pendant la durée de leur mandat, ces personnes bénéficient également sur le territoire fédéral des mêmes privilèges et immunités que ceux accordés aux membres des missions diplomatiques.

### Article 9

1. — La législation de la Haute Commission Alliée non-abrogée à la date d'entrée en vigueur de la présente Convention et relative à la déconcentration des industries charbonnières et sidérurgiques allemandes sera maintenue en vigueur pour autant et aussi longtemps que des mesures de déconcentration ordonnées avant cette date restent à exécuter ou que des ayants-droit restent à protéger.

2. The Federal Government shall ensure that the measures decreed under the legislation referred to in paragraph 1 of this Article by regulations or orders of the Allied High Commission or of its subordinate bodies as well as the measures required to be taken in implementation of the plans approved by such orders shall be carried through to completion.

3. The provisions of this Article shall be without prejudice to such expansion or affiliation of enterprises of the German coal mining and iron and steel industries as shall be permitted under the Treaty on the Establishment of the European Community for Coal and Steel.

### Article 10

1. A mixed committee of experts composed of seven members shall be established according to the following procedure. Three of its members shall be appointed by the Federal Republic and one by each of the Three Powers immediately after the Federal Government has received the first application under paragraph 3 of this Article and has notified the Three Powers of that fact. The members so appointed shall elect a seventh member by majority vote within six months after this notification. If within that time the seventh member shall not have been elected or shall not have accepted election, the Board of Directors of the Bank for International Settlements shall be requested to appoint as a seventh member an expert who shall not be a national of any of the Signatory States.

2. The function of the Mixed Committee shall be to consider applications for extensions of the final time for the disposition of securities required by regulations or orders of the Allied High Commission or its subordinate bodies or by reason of the terms of a plan approved by any such order.

3. Applications must be filed with the Federal Government not later than one year before the expiration of the time fixed for the disposition of the securities. The applicant shall, until the decision of the Mixed Committee is rendered, be entitled to file any additional supporting papers.

4. The Mixed Committee shall extend the time fixed for the disposition of the securities, provided that the applicant establishes that all of such securities could not, with the exercise of reasonable efforts, be disposed of on reasonable terms and on a basis which is compatible with

2. — Le Gouvernement Fédéral fera en sorte que des mesures édictées en application de la législation mentionnée au paragraphe 1 du présent Article par voie de règlements ou d'ordres pris par la Haute Commission Alliée ou ses organismes subordonnés, ainsi que les mesures dont l'application est exigée en application des plans approuvés par de tels ordres, soient entièrement exécutées.

3. — Les dispositions du présent Article ne pourront être opposées aux expansions et aux affiliations d'entreprises des industries allemandes charbonnières et sidérurgiques qui seront permises sous le régime du Traité instituant la Communauté Européenne du Charbon et de l'Acier.

### Article 10

1. — Un comité mixte d'experts composé de sept membres sera créé conformément aux dispositions ci-après. Trois de ses membres seront nommés par la République Fédérale, et un par chacune des trois autres Puissances, aussitôt que le Gouvernement Fédéral aura reçu la première requête présentée en application du paragraphe 3 du présent Article et en aura informé les trois autres Puissances. Les membres ainsi nommés éliront à la majorité le septième membre dans un délai de six mois à partir de cette notification. Au cas où à l'expiration de ce délai, le septième membre n'aurait pas été nommé ou n'aurait pas accepté sa désignation, il sera demandé au Conseil d'Administration de la Banque des Règlements Internationaux de désigner pour ce poste un expert qui ne soit pas ressortissant de l'un des États Signataires.

2. — Les fonctions du Comité Mixte consistent à étudier les requêtes tendant au report du terme final fixé, pour la vente des titres, soit par un règlement ou un ordre émanant de la Haute Commission Alliée ou d'un de ses organismes subordonnés, soit aux termes d'un plan approuvé par un tel ordre.

3. — Les requêtes seront déposées auprès du Gouvernement Fédéral au plus tard un an avant l'expiration du délai fixé pour la vente des titres. Le requérant aura le droit, jusqu'à ce que le Comité Mixte ait pris sa décision, de déposer tous documents supplémentaires à l'appui de sa demande.

4. — Le Comité Mixte prolongera le délai fixé pour la vente des titres pour autant que le requérant établira que tous les titres n'ont pu, en dépit d'efforts sérieux, être vendus à des conditions raisonnables et compatibles avec l'intérêt public en Allemagne, et qu'il n'est pas non plus possible de

the German public interest and that such disposition will not be possible within the remaining time without a disruptive effect on the German capital market.

5. Any extension under paragraph 4 of this Article shall be granted for not more than one year but shall be subject to renewal upon a further application on the basis of the standards set forth in that paragraph. The Mixed Committee may attach appropriate conditions to any such extension or renewal.

6. The decision of a majority of the members shall constitute the decision of the Mixed Committee. The Committee shall render its decision before the expiration of the time fixed for the disposition of the securities.

7. The emoluments of the members of the Mixed Committee shall be paid by each of the Signatory States in respect of the member or members appointed by it. One-half of the emoluments of the seventh member shall be paid by the Federal Republic, and one-sixth by each of the Three Powers. The Mixed Committee may charge the remaining costs, in whole or in part, to the applicants.

8. The Mixed Committee shall adopt its own rules for the conduct of its business.

### Article 11

1. The Allied High Commission legislation concerning the termination of the deconcentration and liquidation of the I. G. Farbenindustrie A. G. i. L. to the extent that such legislation is in force on the entry into force of the present Convention shall be maintained in force until the liquidation of the I. G. Farbenindustrie A. G. i. L. in accordance with such legislation has been completely carried out. Those provisions of the legislation referred to in the first sentence of this paragraph which concern rights or obligations (Rechtsverhältnisse) continuing to exist after the completion of the liquidation of I. G. Farbenindustrie A. G. i. L. shall be maintained in force until such rights and obligations have been completely settled.

2. The Federal Government shall ensure that the measures decreed under the legislation referred to in paragraph 1 of this Article by regulations or orders of the Allied High Commission or of its subordinate bodies shall be carried through to completion.

réaliser cette vente dans le délai restant sans troubler de façon durable le marché allemand des capitaux.

5. — Aucune prorogation de délai en application du paragraphe 4 du présent Article ne pourra excéder un an. Toutefois, la prolongation pourra être renouvelée sur le vu d'une nouvelle requête à l'examen de laquelle s'appliqueront les mêmes critères. Le Comité Mixte pourra attacher des conditions appropriées à l'octroi d'une prorogation de délai ou au renouvellement de la prorogation.

6. — Les décisions du Comité Mixte seront prises à la majorité de ses membres. Le Comité devra prendre sa décision avant l'expiration du délai fixé pour la vente des valeurs.

7. — Les traitements et indemnités des membres du Comité Mixte seront payés par les Etats Signataires, chacun supportant les dépenses afférentes aux traitements et idemnités du ou des membres qu'il a nommés. La République Fédérale supportera la moitié des émoluments et des indemnités du septième membre; chacune des Trois Puissances en supportera un sixième. Le Comité Mixte pourra imputer le reste des frais, en totalité ou en partie, aux requérants.

8 — Le Comité Mixte fixera ses propres règles de fonctionnement.

### Article 11

1. — La législation de la Haute-Commission Alliée non-abrogée à la date d'entrée en vigueur de la présente Convention et relative à l'achèvement de la déconcentration et de la liquidation de l'I.G. Farbenindustrie A. G. i. L. sera maintenue en vigueur jusqu'à ce que la liquidation de l'I.G. Farbenindustrie A. G. i. L. soit achevée conformément à cette législation. Les dispositions de la législation précitée, relatives aux droits et obligations (Rechtsverhältnisse) qui continueront à exister après l'achèvement de la liquidation de l'I.G. Farbenindustrie A. G. i. L. resteront en vigueur jusqu'à ce que ces droits et obligations aient été définitivement satisfaits.

2. — Le Gouvernement Fédéral fera en sorte que les mesures, édictées en application de la législation mentionnée au paragraphe 1 du présent Article par voie de règlements ou d'ordres pris par la Haute-Commission Alliée ou ses organismes subordonnés, soient entièrement exécutées.

### Article 12

1. After the entry into force of the present Convention the Board of Review provided for under Article 13 (as amended) of Allied High Commission Law No. 27 shall consist of one member appointed by each of the Three Powers and three members appointed by the Federal Republic. As so constituted this Board of Review shall continue to be the sole appropriate body to review, on the petition of interested persons, any orders issued under subparagraph (c) of Article 5 of Law No. 27, or under paragraph 1 of Article 5 of Allied High Commission Law No. 35. The independence of the members of the Board of Review and their freedom of decision shall not be impaired by instructions or other actions of their Governments. Before rendering a decision the Board of Review shall grant the claiment a hearing.

2. The emoluments of the members of the Board of Review shall be paid by each of the Signatory States in respect of the member or members appointed by it. One-half of the remaining expenses of the Board of Review shall be borne by the Federal Republic, and one-sixth by each of the Three Powers.

### Article 13

In order to facilitate the smooth transition from the Occupation regime to normal diplomatic relationships, and to provide for the accommodation of the Embassies and Consulates of the United States of America, the United Kingdom of Great Britain and Northern Ireland and the French Republic, the Governments of the United States, the United Kingdom and the French Republic are hereby granted the right, subject to the payment of compensation in appropriate cases, to the continued use for a transitional period of the property used by them on the entry into force of the present Convention, provided such property is required for use by the Embassies and Consulates to be set up by them.

## CHAPTER TWO

### Decartelization and Deconcentration

Deleted.

## CHAPTER THREE

### Internal Restitution

### Article 1

This Chapter relates to:

(a) the restitution of identifiable property to victims of Nazi oppression pursuant to the following legislation:

### Article 12

1. — Après l'entrée en vigueur de la présente Convention, la Commission de Révision prévue à l'Article 13 amendé de la Loi N° 27 de la Haute-Commission Alliée se composera de trois membres nommés par la République Fédérale et d'un membre nommé par chacune des Trois Puissances. La Commission de Révision ainsi constituée continuera d'être le seul organisme compétent pour examiner, à la requête de toute personne intéressée, tout ordre édicté en application de l'alinéa (c) de l'Article 5 de la Loi N° 27 ou du paragraphe 1 de l'Article 5 de la Loi N° 35 de la Haute-Commission Alliée. L'indépendance des membres de la Commission de Révision et leur liberté de décision ne seront pas entravées par des instructions ou par toute autre mesure de leurs Gouvernements. La Commission de Révision devra entendre le requérant avant de prendre sa décision.

2. — Les traitements et indemnités des membres de la Commission de Révision seront payés par les Etats Signataires, chacun supportant les dépenses afférentes aux traitements et indemnités du ou des membres qu'il aura nommés. La République Fédérale supportera la moitié des frais restant, chacune des Trois Puissances en supportera un sixième.

### Article 13

Afin de ménager une transition sans heurts entre le régime d'occupation et un régime fondé sur des relations diplomatiques normales, et en vue de permettre l'installation matérielle des ambassades et des consulats de la République Française, des Etats-Unis et du Royaume-Uni, le droit est accordé aux Gouvernements de la République Française, des Etats-Unis et du Royaume-Uni, sous réserve du paiement d'une redevance dans les cas appropriés, de continuer à utiliser, pendant une période transitoire, les biens dont ils ont l'usage à la date d'entrée en vigueur de la présente Convention, pour autant qu'ils en auront besoin pour les ambassades et consulats qu'ils créeront.

## CHAPITRE DEUXIEME

### Décartellisation et Déconcentration

— supprimé —

## CHAPITRE TROISIEME

### Restitutions Internes

### Article 1

Le présent Chapitre a trait :

(a) à la restitution des biens identifiables aux victimes de l'oppression nazie, en vertu de la législation suivante :

**(i) for the British Zone of Occupation**

Military Government Law No. 59, as amended or supplemented by Ordinances Nos. 205, 212, 225, 232, 233, 237, 240, 243, 252 and 255 of the United Kingdom High Commissioner, by Notice No. 1 under Ordinance No. 233 and by Regulations Nos. 1 to 13 inclusive in their last amended versions;

**(ii) for the United States Zone of Occupation**

Military Government Law No. 59, as amended or supplemented by Amendments Nos. 1 and 2, by Laws Nos. 3, 4, 5, 12, 13, 14, 21 (as amended), 30 and 42 of the United States High Commissioner and by the regulations issued pursuant thereto;

**(iii) for the French Zone of Occupation**

Ordinance No. 120 of the French Commander-in-Chief, as amended or supplemented by Ordinances Nos. 156, 186, and 213 of the French Commander-in-Chief and by Ordinances Nos. 268 and 274 of the French High Commissioner, Order No. 177 under Ordinance No. 120 (as amended) and Ordinance No. 252 of the French High Commissioner, as amended by Ordinance No. 255;

(b) the restitution or reallocation of property seized under the National Socialist regime from co-operative societies, trade unions, charitable organizations and other democratic organizations, pursuant to Control Council Directive No. 50 and to the following legislation:

**(i) for the British Zone**

Military Government Ordinances Nos. 150 and 159, as amended by Ordinances Nos. 208 and 227 of the United Kingdom High Commissioner, paragraph 3 of Article 4 of Military Government Ordinance No. 202 and Ordinance No. 254 of the United Kingdom High Commissioner;

**(ii) for the United States Zone**

Military Government Law No. 58, as amended or supplemented by Supplement No. 1 to Instructions Implementing Military Government Law No. 58 and Control Council Directive No. 50, by Regulation No. 1 pursuant to Military Government Law No. 58 and by Article 2 of Allied High Commission Law No. A-14;

**(iii) for the French Zone**

Ordinance No. 141 of the French Commander-in-Chief;

**(i) Pour la Zone Britannique d'Occupation**

La Loi N° 59 du Gouvernement Militaire, amendée ou complétée par les Ordonnances N°s 205, 212, 225, 232, 233, 237, 240, 243, 252 et 255 du Haut Commissaire Britannique, l'Avis N° 1 pris en application de l'Ordonnance N° 233 et les Règlements N°s 1 à 13 inclus, dans leur version amendée.

**(ii) Pour la Zone Américaine d'Occupation**

La Loi N° 59 du Gouvernement Militaire, modifiée ou complétée par les Amendements N°s 1 et 2 ainsi que par les Lois N°s 3, 4, 5, 12, 13, 14, 21 (amendée), 30 et 42 du Haut Commissaire Américain et par les Règlements pris pour leur application.

**(iii) Pour la Zone Française d'Occupation**

L'Ordonnance N° 120 du Commandant en Chef Francais en Allemagne, amendée ou complétée par les Ordonnances N°s 156, 186 et 213 du Commandant en Chef Français en Allemagne et par les Ordonnances N°s 268 et 274 du Haut Commissaire de la République Francaise, l'Arrêté N° 177 pris en application de l'Ordonnance N° 120 (amendée), et l'Ordonnance N° 252 du Haut Commissaire de la République Française, amendée par l'Ordonnance N° 255.

(b) à la restitution ou la nouvelle attribution des biens saisis, sous le régime national-socialiste, aux sociétés coopératives, syndicats, organisations charitables et autres organisations démocratiques, en vertu de la Directive N° 50 du Conseil de Contrôle et de la législation suivante:

**(i) Pour la Zone Britannique d'Occupation**

L'Ordonnance N° 150 et l'Ordonnance N° 159 du Gouvernement Militaire, amendées par les Ordonnances N°s 208 et 227 du Haut Commissaire Britannique, le paragraphe 3 de l'Article 4 de l'Ordonnance N° 202 du Gouvernement Militaire et l'Ordannance N° 254 du Haut Commissaire Britannique.

**(ii) Pour la Zone Américaine d'Occupation**

La Loi N° 58 du Gouvernement Militaire, amendée ou complétée par l'Additif N° 1 aux instructions prises pour l'application de la Loi N° 58 et de la Directive N° 50 du Conseil de Contrôle, par le Règlement N° 1 édicté en vertu de la Loi N° 58 du Gouvernement Militaire, et par l'Article 2 de la Loi N° A-14 de la Haute Commission Alliée.

**(iii) Pour la Zone Française d'Occupation**

L'Ordonnance N° 141 du Commandant en Chef Français en Allemagne.

(c) the blocking, control, administration and final disposal, in accordance with the legislation referred to in sub-paragraphs (a) and (b) of this Article, of the property also referred to in those sub-paragraphs pursuant to SHAEF and Military Government Laws No 52 (as amended) and the regulations, orders licenses, and instructions issued thereunder, so far as applicable to such property or the proceeds thereof.

### Article 2

The Federal Republic hereby acknowledges the need for, and assumes the obligation to implement fully and expeditiously and by every means in its power, the legislation referred to in Article 1 of this Chapter and the programmes for restitution and reallocation thereunder provided The Federal Republic shall entrust a Federal agency with ensuring the fulfilment of the obligation undertaken in this Article, paying due regard to the provisions of the Basic Law. The following Articles of this Chapter shall not be construed as limiting to the measures therein specified the obligation assumed under this Article.

### Article 3

1. Subject to the provisions of Article 6 of this Chapter, the legislation referred to in Article 1 of this Chapter, as amended in paragraph 2 of Article 4 of this Chapter, shall be maintained in force until all claims filed thereunder have been fully dealt with. Moreover, that portion of such legislation as relates to the establishment, rights and continued existence of successor organizations and trust corporations shall be maintained in force until all such organizations and corporations have completed the tasks for which they were created.

2. The Federal Republic may exercise all legislative powers exercisable by the Three Powers or any of them pursuant to such legislation, in a manner not inconsistent therewith, by means of Federal legislation or of ordinances of the Federal Government.

3. Deleted.

4. The Federal Republic hereby undertakes to maintain and to augment or supplement in the several Zones of

(c) au blocage, au contrôle, à l'administration et à la disposition définitive, conformément aux textes visés dans les alinéas (a) et (b) du présent Article des biens également visés dans ces alinéas, en vertu des Lois Nº 52 amendées du SHAEF et des Gouvernements Militaires, et des règlements, arrêtés, licences et instructions édictés pour leur application, dans la mesure où ils sont applicables à de tels biens ou au produit de ces biens.

### Article 2

La République Fédérale reconnaît la nécessité et assume l'obligation d'appliquer entièrement et dans les meilleurs délais, par tous les moyens en son pouvoir, la législation mentionnée à l'Article 1 du présent Chapitre, ainsi que les programmes de restitutions et de nouvelles attributions qu'elle prévoit. La République Fédérale chargera une agence fédérale du soin d'assurer l'exécution de l'obligation assumée dans le présent Article, compte tenu des dispositions de la Loi Fondamentale. Les articles suivants du présent Chapitre ne seront pas interprétés comme limitant, aux mesures qui y sont précisées, l'obligation assumée aux termes du présent Article.

### Article 3

1. — Sous réserve des dispositions de l'Article 6 du présent Chapitre, la législation mentionnée à l'Article 1 du présent Chapitre, telle qu'amendée aux termes du paragraphe 2 de l'Article 4 du présent Chapitre, sera maintenue en vigueur, jusqu'à ce qu'il ait été complètement disposé de toutes les demandes présentées en application de ces textes. En outre, la partie de cette législation qui concerne l'institution, les droits ou la continuité de l'existence des organisations successorales et des « trust corporations » sera maintenue en vigueur jusqu'à ce que ces organisations et « corporations » aient achevé les tâches pour lesquelles elles ont été créées.

2. — La République Fédérale peut exercer tous les pouvoirs législatifs dont l'exercice appartient aux Trois Puissances ou à l'une d'entre elles en vertu de cette législation, d'une manière qui ne soit pas incompatible avec celle-ci, par voie de législation fédérale ou d'ordonnance du Gouvernement Fédéral

3. — Supprimé.

4. — La République Fédérale s'engage à maintenir, à augmenter ou à compléter dans les Zones d'Occu-

Occupation of the Three Powers, where necessary for the effective carrying out of the programmes referred to in Article 2 of this Chapter, the existing administrative and judicial agencies or organizations which are concerned with

(a) the blocking, control, administration, unblocking and disposal of property subject to claims under the legislation referred to in Article 1;

(b) the filing, investigation, assessment, adjudication and final settlement of claims under that legislation.

5. The Federal Republic further undertakes

(a) Deleted.
(b) Deleted.
(c) Deleted.

(d) at all times after the entry into force of the present Convention, to apply to non-residents who are successful claimants under the legislation referred to in Article 1 of this Chapter, terms and conditions for the following transactions:

(i) the use and disposal (including the removal from the Federal territory) of property restituted to them, or of property acquired in replacement or with the proceeds thereof, and

(ii) the use and disposal of Deutsche Mark balances resulting from the satisfaction of restitution claims and from the proceeds of the realization of restituted properties including the conversion of such balances into foreign exchange and the transfer abroad of such exchange

which shall be no less favourable than those applicable to them immediately before the entry into force of the present Convention, or than those which may, at the time of the transaction, be applicable to owners of other property who give up their ordinary residence in the Federal territory, whichever are the more favourable.

6. The undertakings of the Federal Republic pursuant to this Article and to Article 2 of this Chapter shall not involve any direct obligation with regard to the establishment of the Restitution Agencies of the Länder, and the agencies of the Länder dealing with the matters referred to in sub-paragraph (c) of Article 1 of this Chapter, and their administrative procedures. However, no changes shall be made with regard to existing estab-

pation des Trois Puissances, lorsque cela sera nécessaire pour accomplir efficacement les programmes visés à l'Article 2 du présent Chapitre, les organismes ou services existants, administratifs ou judiciaires, qui traitent des questions suivantes :

(a) blocage, contrôle, administration, déblocage et disposition des biens faisant l'objet de demandes en vertu de la législation mentionnée à l'Article 1 ;

(b) dépôt, instruction, évaluation, décision et règlement définitif des demandes présentées en vertu de cette législation.

5. — La République Fédérale s'engage, en outre :

(a) supprimé ;
(b) supprimé ;
(c) supprimé ;

(d) à faire bénéficier, à tout moment après l'entrée en vigueur de la présente Convention, les non-résidants qui ont obtenu gain de cause à la suite de demandes présentées en vertu de la législation mentionnée à l'Article 1 du présent Chapitre, de conditions pour les opérations suivantes :

(i) l'utilisation et la disposition (y compris l'enlèvement hors du territoire fédéral) de biens qui leur out été restitués ou de biens acquis en remplacement de ces biens ou avec le produit de ces biens, et

(ii) l'utilisation et la disposition de soldes en Deutsche Mark résultant du paiement de créances de restitution et du produit de la réalisation de biens restitués, y compris la conversion de ces soldes en devises étrangères et le transfert à l'étranger de ces devises;

qui ne seront pas moins favorables que les conditions qui leur seront applicables immédiatement avant l'entrée en vigueur de la présente Convention, ou que celles qui pourront, à la date de l'opération, être applicables aux propriétaires d'autres biens qui abandonneront leur résidence habituelle sur le territoire de la République Fédérale, selon celles de ces conditions qui seront les plus favorables.

6. — Les engagements de la République Fédérale, en vertu du présent Article et de l'Article 2 du présent Chapitre, n'impliqueront aucune obligation directe en ce qui concerne l'institution des agences de restitutions des Länder ou les agences des Länder qui traitent des matières visées au paragraphe (c) de l'Article 1 du présent Chapitre, et leurs procédures administratives. Toutefois, il ne sera apporté aux institutions et aux procé-

lishments and administrative procedures which would in any way impede or endanger the full and expeditious implementation of the programmes referred to in Article 2.

### Article 4

1. The Federal Republic hereby undertakes

(a) subject to paragraph 3 of this Article, to ensure the payment to restitutees of all judgments or awards which have been or hereafter shall be given or made against the former German Reich under the legislation referred to in Article 1 of this Chapter;

(b) to assume forthwith, by appropriate arrangements with the City of Berlin, liability for the payment, on terms corresponding to those set out in this Article, of all judgments and awards against the former German Reich under the internal restitution legislation in force in the Western Sectors of Berlin.

2. The legislation referred to in sub-paragraphs (a) and (b) of Article 1 of this Chapter shall be deemed to be amended so as to provide that judgments or awards based on indebtedness in Reichsmarks of the former Reich for a sum of money (Geldsummenansprüche) shall be converted into Deutsche Marks at the rate of ten Reichsmarks for one Deutsche Mark. Judgments or awards for compensation which may be given against the former Reich under the legislation referred to in sub-paragraphs (a) and (b) of Article 1 shall be made in Deutsche Marks assessed in accordance with the general principles of German law applicable to the assessment of compensation as set forth in the German Civil Code.

3. The obligation of the Federal Republic to the Three Powers with respect to money judgments and awards under paragraph 1 of this Article shall be satisfied when such judgments and awards shall have been paid or shall, if the Federal Republic so requests, be considered to have been satisfied when the Federal Republic shall have paid a total of DM 1.500.000.000 thereon. In determining the time and method of payment of such judgments and awards, the Federal Republic may take into consideration its capacity to pay.

### Article 5

Successor organizations and trust corporations appointed pursuant to the legislation referred to in sub-

dures administratives existantes aucun changement qui entraverait ou mettrait en péril, de quelque manière que ce soit, l'application totale et rapide des programmes visés à l'Article 2.

### Article 4

1. — La République Fédérale s'engage :

(a) sous réserve des dispositions du paragraphe 3 du présent Article, à assurer le règlement en faveur des ayants-droit à restitution de tous jugements ou sentences qui ont été ou seront prononcés ou rendus à l'encontre de l'ancien Reich allemand, en vertu de la législation visée à l'Article 1 du présent Chapitre;

(b) à assumer immédiatement, au moyen d'arrangements appropriés avec Berlin, la responsabilité du paiement, à des conditions correspondant à celles fixées au présent Article, de tous jugements et sentences rendus à l'encontre de l'ancien Reich allemand, en vertu de la législation sur les restitutions internes en vigueur dans les secteurs occidentaux de Berlin.

2. — La législation visée aux alinéas (a) et (b) de l'Article 1 du présent Chapitre sera considérée comme amendée, de facon à prévoir que les jugements ou sentences fondés sur les dettes en Reichsmark de l'ancien Reich pour une somme d'argent (Geldsummenansprüche) seront converties en Deutsche Mark au taux de 10 Reichsmark pour 1 Deutsche Mark. Les jugements et sentences portant indemnisation, qui pourront être rendus contre l'ancien Reich allemand en vertu de la législation visée aux alinéas (a) et (b) de l'Article 1, seront prononcés en Deutsche Mark, évalués conformément aux principes généraux du droit allemand applicable à l'évaluation des indemnisations selon le Code Civil allemand.

3. — L'obligation de la République Fédérale à l'égard des Trois Puissances, en ce qui concerne les jugements ou sentences impliquant un versement en espèces en vertu du paragraphe 1 du présent Article, sera remplie lorsque ces jugements et sentences auront été réglés ou sera, si la République Fédérale le demande, considérée comme ayant été remplie lorsque la République Fédérale aura versé une somme totale de 1.500 millions de DM. à cet effet. En vue de la détermination de l'époque et de la méthode de règlement de ces jugements et sentences, la République Fédérale pourra tenir compte de sa capacité de paiement.

### Article 5

Les organisations successorales et les « trust corporations » désignées en application de la législation mentionnée paragraph (a) of Article 1 of this Chapter, whether or not organized under German law, now enjoy immunity from taxation in the Federal Republic. With regard to taxes the proceeds of which accrue exclusively to the Federation, the organizations and corporations shall continue to enjoy this immunity. They shall also be exempt from any exceptional taxes, levies and imposts, the incidence of which is in fact upon capital assets, imposed in whole or in part for the specific purpose of meeting charges arising out of the war, or out of reparation or restitution to any of the United Nations. With regard to taxes the proceeds of which accrue, in whole or in part, to the Länder, Gemeinden or Gemeindeverbände, the Federal Government will enter into a separate arrangement having in mind the charitable purposes of these organizations and corporations.

## Article 6

1. There is hereby established a Supreme Restitution Court to succeed, under the legislation referred to in sub-paragraph (a) of Article 1 of this Chapter:

(a) The Supreme Restitution Court for the British Zone;

(b) The United States Court of Restitution Appeals of the Allied High Commission for Germany for the United States Zone;

(c) The Higher Court of Restitution (Cour Supérieure pour les Restitutions) for the French Zone.

The composition, jurisdiction, powers and duties of the Supreme Restitution Court shall be as prescribed by the Charter of the Supreme Restitution Court annexed to this Chapter.

2. Each Tribunal to which the Supreme Restitution Court succeeds shall within three months decide those cases in process of final disposition on the entry into force of the present Convention and shall refer to the Supreme Restitution Court all cases not decided at the end of that period. For the purposes of the present Convention, cases which a tribunal, on the entry into force of the present Convention, has not begun to investigate and consider judicially, or has investigated and considered judicially only in regard to matters of procedure, shall not be considered as cases which, on the entry into force of the present Convention, were in process of final disposition.

au paragraphe (a) de l'Article 1 du présent Chapitre, qu'elles soient ou non constituées selon le droit allemand, jouissent actuellement de l'immunité fiscale dans la République Fédérale. En ce qui concerne les impôts dont le produit revient exclusivement à la Fédération, les organisations et « corporations » continueront à jouir de cette immunité. Elles seront également exemptées de tous impôts, taxes ou droits exceptionnels dont l'incidence frappe, en fait, le capital et qui sont prélevés, en tout ou en partie dans le but spécifique de faire face aux charges résultant de la guerre ou des réparations ou restitutions au profit de l'une quelconque des Nations-Unies. En ce qui concerne les impôts dont le produit revient en tout ou en partie aux Länder, aux Gemeinden ou aux Gemeindeverbände, le Gouvernement Fédéral conclura un arrangement séparé en prenant en considération les objectifs charitables de ces organisations ou « corporations ».

## Article 6

1. — Il est institué une Cour Suprême des Restitutions qui, aux termes de la législation mentionnée à l'alinéa (a) du paragraphe 1 de l'Article 1 du présent Chapitre succédera :

(a) en Zone Britannique, à la Cour Suprême des Restitutions;

(b) en Zone Américaine, à la Cour d'Appel des Restitutions Américaine de la Haute Commission Alliée en Allemagne (United States Court of Restitution Appeals of the Allied High Commission for Germany);

(c) en Zone Francaise, à la Cour Supérieure pour les Restitutions.

La composition, la compétence, les pouvoirs et les obligations de la Cour Suprême des Restitution sont définis par la Charte de la Cour Suprême des Restitutions annexée au présent Chapitre.

2. — Chaque juridiction à laquelle succède la Cour Suprême des Restitutions statuera dans les trois mois sur les affaires qui, lors de l'entrée en vigueur de la présente Convention, seront en voie d'être définitivement réglées, et soumettra à cette Cour toutes les affaires sur lesquelles une décision définitive n'aura pas été prise à la fin de cette période. Pour l'application de la présente Convention, ne seront pas considérées comme des affaires qui, lors de l'entrée en vigueur de la présente Convention, seraient en voie d'être définitivement réglées, les affaires qu'une juridiction, à l'entrée en vigueur de la présente Convention, n'a pas commencé à instruire ou à examiner judiciairement ou n'a instruites ou examinées judiciairement qu'au point de vue de la procédure.

## ANNEX
## TO CHAPTER THREE

### Charter of the Supreme Restitution Court

### Article 1

1. The Court shall consist of

(a) the President of the Court,

(b) the Presidential Council (Präsidium),

(c) three Divisions (Senate).

2. Each Division shall be composed of at least five justices, a Clerk and registry, with sufficient personnel to carry out its functions effectively.

3. State Counsel may be appointed to any of the Divisions in such a manner as the Governments of the Three Powers and the Federal Government may decide. Paragraphs 3, 4 and 5 of Article 2 and paragraphs 1, 4, 5 and 6 of Article 3 of the present Charter shall apply *mutatis mutandis*.

4. A Division shall be dissolved when no further cases remain to be dealt with by it. The terms of office of all its justices shall thereupon terminate. The Court shall be dissolved on the same date as the last active Division is dissolved.

5. The seat of the Court shall be at Herford The First Division of the Court shall have its seat at Rastatt, the Second Division at Herford and the Third Division at Nuremberg.

6. The Presidential Council may from time to time with the approval of the Governments of the Three Powers and the Federal Government determine

(a) a new seat for the Court or any of its Divisions,

(b) the number of justices required by any of the Divisions in addition to those appointed in accordance with Article 2,

(c) the date of dissolution of each of the Divisions,

(d) the establishment of administrative and other non-judicial staff required by the Court or any of its Divisions, so far as this is not provided for in the present Charter.

7. Without prejudice to the provisions of paragraph 6, the Presidential Council shall render annual reports to the Governments of the Three Powers and the Federal Government setting forth its requirements for judicial and other personnel for the twelve months next following the date of the report. The first report shall be rendered between the fourteenth and seventeenth month after the entry into force of the present Charter.

## ANNEXE
## AU CHAPITRE TROISIEME

### Charte de la Cour Suprême des Restitutions

### Article 1

1. — La Cour est composée:

(a) du Président de la Cour;

(b) du Conseil des Présidents (Präsidium);

(c) de trois Chambres (Senate).

2. — Chaque Chambre est composée d'au moins cinq juges, d'un greffier et d'un greffe, ainsi que du personnel suffisant pour accomplir efficacement ses travaux.

3. — Un Commissaire du Gouvernement peut être désigné auprès de l'une quelconque des Chambres de la Cour dans les conditions que les Gouvernements des Trois Puissances et le Gouvernement Fédéral pourront déterminer Les paragraphes 3, 4 et 5 de l'Article 2 et les paragraphes 1, 4, 5 et 6 de l'Article 3 de la présente Charte s'appliqueront *mutatis mutandis* aux Commissaires du Gouvernement.

4. — La dissolution d'une Chambre doit être prononcée lorsque celle-ci n'a plus à connaître d'aucune affaire. Les fonctions de ses membres prennent fin à ce moment La Cour sera dissoute à la date de la dissolution de celle de ses Chambres qui restera la dernière en activité.

5. — Le siège de la Cour est à Herford La Première Chambre a son siège à Rastatt, la Deuxième Chambre à Herford et la Troisième Chambre à Nuremberg.

6. — Le Conseil des Présidents peut, avec l'approbation des Gouvernements des Trois Puissances et du Gouvernement Fédéral:

(a) désigner un nouveau siège pour la Cour ou l'une de ses Chambres;

(b) fixer le nombre des juges requis par l'une quelconque des Chambres en plus de ceux nommés conformément à l'Article 2;

(c) fixer la date de dissolution de chacune des Chambres;

(d) arrêter, dans la mesure où cette question n'est pas résolue par la présente Charte, le nombre, le statut et l'affectation du personnel administratif ou non judiciaire nécessaire à la Cour ou à l'une de ses Chambres.

7. — Sans préjudice des dispositions du paragraphe 6, le Conseil des Présidents fera aux Gouvernements des Trois Puissances et au Gouvernement Fédéral un rapport annuel exposant ses besoins en personnel judiciaire ou autre pour les douze mois suivant immédiatement la date de ce rapport. Le premier rapport sera établi entre le quatorzième et le dix-septième mois après l'entrée en vigueur de la présente Charte.

### Article 2

1. The five justices referred to in paragraph 2 of Article 1 shall be appointed as follows:

(a) two justices appointed by the Government of the French Republic in the case of the First Division; two by the Government of the United Kingdom in the case of the Second Division; and two by the Government of the United States in the case of the Third Division;

(b) two justices appointed by the Federal Government;

(c) one justice who shall be neither a national of any of the Three Powers nor a German national, and who shall be appointed by agreement between the Government of the Power designated in sub-paragraph (a) of this paragraph to appoint justices to the Division concerned (hereinafter referred to as "the Power concerned") and the Federal Government, or failing such agreement, by the President of the International Court of Justice.

2. The Governments of the Three Powers and the Federal Government shall make known their first appointments pursuant to paragraph 1 of this Article not later than the date of entry into force of the Present Charter. By the same date the Power concerned and the Federal Government shall agree upon the justice referred to in sub-paragraph (c) of paragraph 1. If he has not been appointed within one month after that date, either the Power concerned or the Federal Government may request the President of the International Court of Justice to appoint him. The provisions of the preceding sentence shall also apply if the Power concerned and the Federal Government fail to agree on the appointment of an additional justice who is not to be appointed unilaterally by the Power concerned or the Federal Government, within one month after approval of a decision of the Presidential Council under sub-paragraph (b) of paragraph 6 of Article 1 of the present Charter that such an additional justice is required.

3. The justices appointed by the Governments of the Three Powers shall be qualified in accordance with the legislation referred to in Article 1 of the foregoing Chapter. The justices appointed by the Federal Government shall be qualified for judicial office in a Land of the Federal Republic. The other justices shall have the qualifications required in the country of which they are nationals or resi-

### Article 2

1. — Les cinq juges, visés au paragraphe 2 de l'Article 1, sont nommés ainsi qu'il suit:

(a) deux juges nommés par le Gouvernement de la République Française pour la Première Chambre, deux juges nommés par le Gouvernement du Royaume-Uni pour la Deuxième Chambre et deux juges nommés par le Gouvernement des États-Unis d'Amérique pour la Troisième Chambre;

(b) deux juges nommés par le Gouvernement Fédéral;

(c) un juge qui n'est ni un ressortissant de l'une des Trois Puissances, ni un ressortissant allemand, nommé par accord entre le Gouvernement de la Puissance chargée, à l'alinéa (a) du présent paragraphe, de nommer des juges à la Chambre intéressée (ci-après désignée « la Puissance intéressée ») et le Gouvernement Fédéral, ou, à défaut d'un tel accord, par le Président de la Cour Internationale de Justice.

2. — Les Gouvernements des Trois Puissances et le Gouvernement Fédéral notifieront, au plus tard à la date d'entrée en vigueur de la présente Charte, les premières nominations effectuées en vertu du paragraphe 1 du présent Article. A la même date, la Puissance intéressée et le Gouvernement Fédéral se mettront d'accord pour nommer le juge visé à l'alinéa (c) du paragraphe 1. Si, dans un délai d'un mois après la date précitée, ce juge n'a pas été nommé, la Puissance intéressée ou le Gouvernement Fédéral peut prier le Président de la Cour Internationale de Justice de procéder à cette nomination. Les dispositions de la phrase précédente s'appliqueront également si la Puissance intéressée et le Gouvernement Fédéral ne sont pas parvenus, dans le délai d'un mois après la décision du Conseil des Présidents, prise en application de l'alinéa (b) du paragraphe 6 de l'Article 1 de la présente Charte, et aux termes de laquelle un juge supplémentaire est nécessaire, à un accord sur la nomination d'un juge qui ne doit pas être nommé unilatéralement par le Gouvernement de la Puissance intéressée ou par le Gouvernement Fédéral.

3 — Les juges nommés par les Gouvernements des Trois Puissances doivent remplir les conditions prévues par la législation visée à l'Article 1 du Chapitre qui précède. Les juges nommés par le Gouvernement Féderal doivent remplir les conditions requises pour accéder aux fonctions judiciaires dans un Land de la République Fédérale Les autres juges doivent remplir les conditions requises

dents for appointment to judicial office or equivalent qualifications.

4. The Presidential Council may declare a vacancy for a justice if, in its opinion, a justice has, without reasonable excuse, failed

(a) to attend a meeting for which he has been duly designated, or

(b) otherwise to perform his duties diligently.

5. The appointment to fill a vacancy created by the expiration of the term of office, death, resignation, or removal from office in accordance with the preceding paragraph of a justice shall be made in the same manner as his appointment within one month of the vacancy occuring.

### Article 3

1. Subject to the provisions of paragraph 4 of Article 1 of the present Charter, all justices shall be appointed in the first instance for a period of two years and their terms of office may be renewed thereafter for successive periods of one year. At least six months notice in writing shall be given to a justice of intention not to renew his term of office. A justice appointed by the Government of one of the Three Powers shall be notified of such intention by the Power concerned, a justice appointed by the Federal Government shall be notified of such intention by it, and a justice appointed by the Government of one of the Three Powers and the Federal Government jointly or by the President of the International Court of Justice shall be notified of such intention by the Power concerned and the Federal Government. In the absence of notice, a justice shall continue in office for a period of one year.

2. Any justice may at any time resign his office. But he shall continue in office until his successor has taken office.

3. No justice may be dismissed from office, except in accordance with paragraph 4 of Article 2 of the present Charter.

4. No justice shall be assigned to any non-judicial function, engage in any activity incompatible with the exercise of his duties, or participate in the adjudication of any claim with which he has been previously concerned in any capacity, except as a member of a tribunal to which the Court succeeds, or in which he has a direct interest. Differences of opinion regarding the applicability of this paragraph shall be resolved by the appropriate Division in accordance with Article 8 of the present Charter.

dans les pays dont ils sont ressortissants ou dans lesquels ils résident, pour accéder aux fonctions judiciaires, ou remplir des conditions équivalentes.

4. — Le Conseil des Présidents peut déclarer vacant le poste d'un juge s'il estime que celui-ci a, sans excuse valable:

(a) omis d'assister à une audience pour laquelle il avait été régulièrement désigné;

(b) failli de toute autre façon à l'exercice diligent de ses fonctions.

5. — Il est pourvu au siège devenu vacant à l'expiration d'un mandat, ou par la mort d'un juge, sa démission ou sa révocation survenue conformément aux dispositions du paragraphe précédent, selon la méthode suivie pour sa nomination et dans un délai d'un mois à compter de la date à laquelle se produit la vacance.

### Article 3

1. — Sous réserve des dispositions du paragraphe 4 de l'Article 1 de la présente Charte, les juges sont nommés en premier lieu pour deux ans et leurs fonctions peuvent être renouvelées par périodes successives d'une année. Lorsqu'il n'est pas envisagé de renouveler les fonctions d'un juge, celui-ci doit en être informé par un préavis de six mois. Les juges nommés par le Gouvernement de l'une des Trois Puissances seront avisés de cette intention par la Puissance intéressée, les juges nommés par le Gouvernement Fédéral seront avisés de cette intention par celui-ci et les juges nommés par le Gouvernement de l'une des Trois Puissances et le Gouvernement Fédéral en commun ou par le Président de la Cour Internationale de Justice seront avisés de cette intention par la Puissance intéressée et le Gouvernement Fédéral. A défaut d'une telle notification ce juge sera maintenu en fonctions pour une nouvelle période d'une année.

2. — Un juge peut, en tout temps, résigner ses fonctions, mais il devra continuer à les exercer jusqu'à l'entrée en fonctions de son successeur.

3. — Aucun juge ne peut être démis de ses fonctions, sauf dans les cas prévus au paragraphe 4 de l'Article 2 de la présente Charte.

4. — Aucun juge ne peut être affecté à des fonctions autres que judiciaires; il ne peut se livrer à aucune activité incompatible avec l'exercice de ses fonctions, ni participer au règlement d'aucune affaire dans laquelle il est intéressé directement ou dont il a eu à connaître à quelque titre que ce soit, à moins qu'il ne s'en soit occupé en qualité de membre d'une juridiction à laquelle la Cour a succédé. En cas de contestation sur l'application du présent paragraphe, la Chambre compétente statue, conformément aux dispositions de l'Article 8 de la présente Charte.

5. (a) Every justice shall, during his term of office, have the rank of an equivalent member of the Federal Supreme Court and shall, both during and after his term of office enjoy immunity from suit in respect of acts performed by him in the exercise of his official duties.

(b) A justice who is not a German national shall, during his term of office, enjoy in the Federal territory the same privileges and immunities as are accorded members of diplomatic missions.

6. Each justice shall, before taking office, make a declaration at a public session that he will exercise his duties impartially and conscientiously.

### Article 4

1. Each Division shall be presided over by the justice appointed pursuant to sub-paragraph (c) of paragraph 1 of Article 2 of the present Charter. When he is unable to act, he shall be replaced by a deputy designated by the Presidential Council from the justices not appointed unilaterally by the Power concerned or the Federal Government.

2. The presiding justice or his deputy shall preside at all sittings of his Division, shall fix the time of the sittings, shall determine how the business of the Division shall be divided between its justices and shall be generally responsible for its administration.

### Article 5

1. The presiding justice of the First Division shall act as President of the Court for the remainder of the calendar month in which the present Charter enters into force and for the four full calendar months next following. Thereafter, the presiding justice of each Division in his turn shall so act for four calendar months at a time.

2. The Presidential Council shall consist of the following nine persons:

(a) the President of the Court and the other two presiding justices of Divisions, or their respective deputies;

(b) a justice from each Division or his deputy designated by the Power concerned;

(c) a justice from each Division or his deputy designated by the Federal Government.

3. The Council shall decide by a majority vote of the nine members, except in cases arising under paragraph 4 of Article 2 of the present Charter, when a two-thirds majority shall be necessary.

5. — (a) Pendant la durée de leur mandat, les juges ont le même rang que les membres de la Cour Suprême Fédérale exercant des fonctions équivalentes, et jouissent pendant la durée de leur mandat et après l'expiration de celui-ci de l'immunité de juridiction, à raison des actes accomplis dans l'exercice de leurs fonctions.

(b) Les juges qui ne sont pas de nationalite allemande jouissent en outre sur le territoire fédéral des privilèges et immunitées accordés aux membres des missions diplomatiques.

6. — Tout juge doit, avant d'entrer en fonctions prendre, en séance publique, l'engagement d'exercer ses attributions en pleine impartialité et en toute conscience.

### Article 4

1. — Chaque Chambre est présidée par le juge nommé conformément à l'alinéa (c) du paragraphe 1 de l'Article 2 de la présente Charte. Ce juge, lorsqu'il n'est pas en mesure de présider, est remplacé par un juge suppléant désigné par le Conseil des Présidents parmi les juges qui ne sont pas nommés unilatéralement par la Puissance intéressée ou par le Gouvernement Fédéral.

2. — Le juge président d'une Chambre ou son suppléant préside toutes les séances de la Chambre, fixe les dates des audiences, décide de la manière dont les affaires de la Chambre seront distribuées entre ses membres et assume d'une facon générale les responsabilités de l'administration de sa Chambre.

### Article 5

1. — Le juge président de la Première Chambre assumera les fonctions de Président de la Cour pendant le restant du mois au cours duquel la présente Charte entrera en vigueur, et continuera à les exercer pendant les quatre mois suivants. Par la suite, les juges présidents des Chambres assumeront la présidence de la Cour à tour de rôle, chacun pendant quatre mois.

2. — Le Conseil des Présidents est composé des neuf personnes suivantes:

(a) le Président de la Cour et les deux autres juges présidents des Chambres, ou leurs suppléants respectifs;

(b) un juge de chaque Chambre, ou son suppléant, désigné par la Puissance intéressée;

(c) un juge de chaque Chambre, ou son suppléant, désigné par le Gouvernement Fédéral.

3. — Les décisions du Conseil seront acquises à la majorité des neuf membres, sauf dans les cas tombant sous le coup du paragraphe 4 de l'Article 2 de la présente Charte, cas dans lesquels la majorité des deux tiers est nécessaire.

4. The Council shall meet at the seat of the Court at such times as the President shall decide.

5. The Council shall be competent

(a) to consider, at the request of any of its members, questions which are of common interest to more than one Division and to inform the presiding justices of the Divisions accordingly;

(b) to decide concerning the interpretation or application of the present Charter, or concerning any other matters assigned to its competence by the present Charter;

(c) to exercise the following powers conferred by the legislation referred to in Article 1 of the foregoing Chapter;

(i) Deleted.

(ii) the powers of the United Kingdom High Commissioner, under paragraph 8 of Article 2 and paragraph 4 of Article 3 of Regulation No. 8, as amended by Regulation No. 11, under British Military Government Law No 59, to approve rules of procedure; and, under his Ordinance No. 233, to approve agencies by notice.

6. The Presidential Council shall appoint the Court Clerks nominated under paragraph 1 of Article 6 of the present Charter, but they shall be directly and exclusively responsible to the presiding justices of the Divisions to which they are appointed. The Presidential Council may also appoint its own administrative staff, which shall be subject to the control of the President of the Court and may be nominated by the Federal Government if the Presidential Council so desires.

7. The Council may determine its own rules of procedure.

### Article 6

1. The Court Clerks shall be nominated as follows:

(a) the Clerk of the First Division, by the Government of the French Republic;

(b) the Clerk of the Second Division, by the Government of the United Kingdom;

(c) the Clerk of the Third Division, by the Government of the United States.

2. Each Court Clerk shall have the same powers and duties as the Clerk or Secretary of the tribunal to which his Division succeeds and such additional duties as shall be assigned to him by the presiding justice of that Division.

4. — Le Conseil se réunit au siège de la Cour aux dates fixées par le Président.

5. — Le Conseil est compétent pour:

(a) examiner, à la demande d'un de ses membres, les questions qui intéressent simultanément plusieurs Chambres et conseiller en conséquence les juges présidents des Chambres;

(b) statuer sur l'interprétation ou l'application de la présente Charte, ainsi que sur toutes autres questions qui, en vertu de ladite Charte, relèvent de sa compétence;

(c) exercer les pouvoirs suivants conférés par la législation visée à l'Article 1 du Chapitre qui précède:

(i) supprimé;

(ii) les pouvoirs du Haut Commissaire Britannique, en vertu du paragraphe 8 de l'Article 2 et du paragraphe 4 de l'Article 3 du Règlement N° 8 modifié par le Règlement N° 11 pris en application de la Loi N° 59 du Gouvernement Militaire Britannique, d'approuver les règles de procédure et, en vertu de l'Ordonnance N° 233 du Haut Commissaire Britannique, d'approuver des «Agencies» par un avis.

6. — Le Conseil nomme les greffiers sur proposition faite conformément au paragraphe 1 de l'Article 6 de la présente Charte, mais ceux-ci seront directement et exclusivement responsables devant les juges présidents des Chambres auprès desquelles ils sont nommés. Le Conseil peut également nommer son propre personnel administratif qui relèvera du Président de la Cour et pourra être proposé par le Gouvernement Fédéral si le Conseil désire qu'il en soit ainsi.

7. — Le Conseil peut établir ses propres règles de procédure.

### Article 6

1. — Les greffiers seront proposés de la façon suivante:

(a) le greffier de la Première Chambre, par le Gouvernement de la République Française;

(b) le greffier de la Deuxième Chambre, par le Gouvernement du Royaume-Uni;

(c) le greffier de la Troisième Chambre, par le Gouvernement des États-Unis d'Amérique.

2. — Les greffiers auront respectivement les mêmes pouvoirs et attributions que les greffiers ou secrétaires de la juridiction à laquelle leur Chambre succède, ainsi que les obligations complémentaires qui pourront leur être assignées par les juges présidents de leurs Chambres respectives.

3. Paragraphs 3, 4 and 5 of Article 2 and paragraphs 4 and 5 of Article 3 of the present Charter shall apply *mutatis mutandis* to the Court Clerks.

### Article 7

1. The Federal Republic shall maintain at its own cost and expense the existing facilities and accommodations in use by the tribunals to which the Court succeds and shall provide such additional facilities and accommodations as the Court may, according to a decision of the Presidential Council, from time to time require.

2. (a) The salaries and allowances of the judicial, administrative and other staff of the Court which is nominated, appointed, or employed by the Government of any of the Three Powers shall be fixed and paid by that Power in consultation with the Federal Government. Such salaries and allowances shall be reimbursed to that Power by the Federal Republic.

(b) The salaries and allowances of the judicial, administrative and other staff which are nominated, appointed, or employed by the Federal Government shall be fixed by the Federal Government, in consultion with the Power concerned, and paid by the Federal Republic.

(c) The salaries and allowances of justices who are not appointed unilaterally by the Power concerned or the Federal Government shall be fixed by agreement between the Governments of the Three Powers and the Federal Government and paid by the Federal Republic.

3. All persons referred to in subparagraphs (a) and (b) of paragraph 2 of this Article shall be subject to the administrative and disciplinary control of the appointing, nominating or employing Government, so far as such a control is not inconsistent with the present Charter.

### Article 8

1. All matters shall be adjudicated by five justices of the appropriate Division, of whom one shall be the President or his deputy, two shall be justices appointed by the Power concerned, and two shall be justices appointed by the Federal Government.

2. Decisions of the Divisions shall be given by majority vote and shall be final subject only to the provisions of paragraph 3 of Article 9 of the present Charter.

3. — Les paragraphes 3, 4 et 5 de l'Article 2 et les paragraphes 4 et 5 de l'Article 3 de la présente Charte s'appliqueront *mutatis mutandis* aux greffiers de la Cour.

### Article 7

1. — La République Fédéral maintiendra à ses propres frais et dépens les installations et services actuellement existants et utilisés par les juridictions auxquelles succède la Cour; elle pourvoira à toutes installations ou à tous services supplémentaires dont la Cour pourra éventuellement faire la demande conformément à une décision du Conseil des Présidents.

2. — (a) Les traitements et indemnités du personnel judiciaire, administratif et autre de la Cour, proposé, nommé ou employé par le Gouvernement de l'une des Trois Puissances sont fixés et payés par cette Puissance en consultation avec le Gouvernement Fédéral; ces traitements et indemnités seront remboursés à cette Puissance par la République Fédérale

(b) Les traitements et indemnités du personnel judiciaire, administratif et autre, proposé, nommé ou employé par le Gouvernement Fédéral, sont fixés par celui-ci en consultation avec la Puissance intéressée et payés par la République Fédérale

(c) Les traitements et indemnités des juges qui ne sont pas nommes unilatéralement par la Puissance intéressée ou par le Gouvernement Fédéral sont fixés par accord entre les Gouvernements des Trois Puissances et le Gouvernement Fédéral et payés par la République Fédérale.

3. — Les personnes visées aux alinéas (a) et (b) du paragraphe 2 du présent Article seront soumises au contrôle administratif et disciplinaire du Gouvernement qui les a proposées ou nommées ou qui les emploie, dans la mesure où un tel contrôle n'est pas incompatible avec la présente Charte.

### Article 8

1. — Toutes les affaires sont jugées par cinq juges de la Chambre intéressée dont l'un est le Président, ou son suppléant, deux sont des juges nommés par la Puissance intéressée et les deux autres des juges nommés par le Gouvernement Fédéral.

2. — Les décisions d'une Chambre sont prises à la majorité des voix; elles sont définitives sous réserve des dispositions du paragraphe 3 de l'Article 9 de la présente Charte.

3. The public shall be admitted to all formal hearings (mündliche Verhandlungen).

4. The deliberations of the Presidential Council and of the Divisions shall be secret.

### Article 9

1. The Court shall exercise powers and jurisdiction through its Divisions as follows:

(a) the First Division shall exercise the powers and jurisdiction of the Higher Restitution Court established by Ordinance No. 252 of the French High Commissioner;

(b) the Second Division shall exercise the powers and jurisdiction of the Supreme Restitution Court for the British Zone established by Ordinance No. 255 of the United Kingdom High Commissioner;

(c) the Third Division shall exercise the powers and jurisdiction of the Court of Restitution Appeals established by Law No. 21 (as amended) of the United States High Commissioner.

2. The legislation referred to in Article 1 of the foregoing Chapter shall accordingly be construed and applied by substituting the First Division for the Higher Restitution Court in legislation applicable in the French Zone, the Second Division for the Supreme Restitution Court for the British Zone in legislation applicable in the British Zone, and the Third Division for the Court of Restitution Appeals in legislation applicable in the United States Zone.

3. Decisions of the Arbitration Tribunal pursuant to paragraph 2 of Article 9 of the Charter of the Arbitration Tribunal referred to in Article 9 of the Convention on Relations between the Three Powers and the Federal Republic of Germany and the provisions of Article 10 of that Charter shall be binding on the Court and on all German courts and authorities, so far as those decisions and provisions concern the extent of the jurisdiction of the Court.

### Article 10

1. The official languages of the Presidential Council shall be French, English and German.

2. Otherwise, the official languages of the Court shall be,

(a) for the First Division, French and German;

(b) for the Second and Third Divisions, English and German.

3. — Le public est admis à assister à tous les débats (mündliche Verhandlungen).

4. — Les délibérations du Conseil des Présidents et des Chambres demeureront secrètes.

### Article 9

1. — La Cour exerce ses pouvoirs et sa compétence par l'intermédiaire de ses Chambres, de la façon suivante:

(a) la Première Chambre a les pouvoirs et la compétence de la Cour Supérieure pour les Restitutions, instituée par l'Ordonnance N° 252 du Haut Commissaire Français;

(b) la Deuxième Chambre a les pouvoirs et la compétence de la Cour Suprême des Restitutions pour la Zone Britannique, instituée par l'Ordonnance N° 255 du Haut Commissaire du Royaume-Uni;

(c) la Troisième Chambre a les pouvoirs et la compétence de la Cour d'Appel des Restitutions (Court of Restitution Appeals) instituée par la Loi N° 21, amendée, du Haut Commissaire des États-Unis.

2. — La législation visée à l'Article 1 du Chapitre qui précède sera, en conséquence, interprétée et appliquée en substituant la Première Chambre à la Cour Supérieure pour les Restitutions dans la législation applicable en zone française, la Deuxième Chambre à la Cour Suprême des Restitutions pour la Zone Britannique dans la législation applicable en zone britannique et la Troisième Chambre à la Cour d'Appel des Restitutions dans la législation applicable en zone américaine.

3. — Les décisions du Tribunal d'Arbitrage, rendues conformément aux dispositions du paragraphe 2 de l'Article 9 de la Charte du Tribunal d'Arbitrage visé à l'Article 9 de la Convention sur les Relations entre les Trois Puissances et la République Fédérale d'Allemagne et les dispositions de l'Article 10 de cette Charte, lieront la Cour et toutes les juridictions et autorités allemandes, dans la mesure où ces décisions et dispositions se rapportent à l'étendue de la compétence de la Cour.

### Article 10

1. — Les langues officielles du Conseil des Présidents sont le français, l'anglais et l'allemand.

2. — Les langues officielles de la Cour sont:

(a) pour la Première Chambre, le français et l'allemand;

(b) pour la Deuxième et la Troisième Chambre, l'anglais et l'allemand.

## CHAPTER FOUR

## Compensation for Victims of Nazi Persecution

1. The Federal Republic acknowledges the obligation to assure in accordance with the provisions of paragraphs 2 and 3 of this Chapter adequate compensation to persons persecuted for their political convictions, race, faith or ideology, who thereby have suffered damage to life, limb, health, liberty, property, their possessions or economic prospects (excluding identifiable property subject to restitution). Furthermore, persons persecuted by reason of nationality, in disregard of human rights, who are now political refugees and no longer enjoy the protection of their former home country shall receive adequate compensation where permanent injury has been inflicted on their health.

2. In the discharge of this obligation, the Federal Republic undertakes

(a) that legislation in this field in the Federal territory shall in the future be not less favourable to claimants than the legislation in force;

(b) that, furthermore, there shall be enacted expeditiously legislation supplementing and amending the legislation now in force in the various Länder which shall, subject to the provisions of sub-paragraph (a) of this paragraph, afford a basis throughout the Federal territory for compensation no less favourable than is afforded in the legislation now in force in the Länder of the United States Zone;

(c) that the legislation referred to in sub-paragraph (b) of this paragraph shall adequately take into account the special conditions arising from the persecution itself, including the loss and destruction of records and documents resulting from the conditions of the persecution or the acts of the persecuting agencies and the death or disappearance of witnesses and of persecuted persons as a result of the persecution;

(d) that the effective and expeditious processing, determination and satisfaction of claims for compensation in this field shall be assured without discrimination against any groups or classes of persecuted persons;

## CHAPITRE QUATRIEME

## Indemnisation des Victimes de la Persécution Nazie

### Article unique

1. — La République Fédérale reconnait l'obligation d'assurer, conformément aux dispositions des paragraphes 2 et 3 du présent Article, une indemnisation appropriée aux personnes persécutées en raison de leurs opinions politiques, de leur race, de leur religion ou de leur idéologie, et qui, de ce fait, ont subi un préjudice dans leur vie, dans leur intégrité corporelle, dans leur santé, dans leur liberté ou dans leur patrimoine, ou des dommages relatifs aux biens qu'elles possédaient ou aux avantages économiques qu'elles pouvaient espérer (à l'exception des biens identifiables soumis à restitution). En outre, les personnes persécutées en raison de leur nationalité en méconnaissance des droits de l'homme, qui sont maintenant des réfugiés politiques et qui ne jouissent plus de la protection de leur ancien pays d'origine, recevront une indemnisation appropriée lorsqu'elles auront subi des dommages permanents à leur santé.

2. — Pour s'acquitter de cette obligation, la République Fédérale s'engage:

(a) à ce que la législation édictée dans ce domaine sur le territoire fédéral ne soit, dans l'avenir, pas moins favorable pour les demandeurs que la législation actuellement en vigueur;

(b) à ce qu'en outre, il soit édicté, dans les meilleurs délais, une législation complétant et amendant la législation actuellement en vigueur, dans les différents Länder, qui, sous réserve des dispositions de l'alinéa (a) du présent paragraphe, fournira sur l'ensemble du territoire fédéral une base d'indemnisation au moins aussi favorable que celle que fournit la législation actuellement en vigueur dans les Länder de la Zone américaine;

(c) à ce que la législation visée à l'alinéa (b) du présent paragraphe tienne compte, d'une manière équitable, des conditions particulières résultant de la persécution elle-même, y compris la perte et la destruction des archives et des documents, consécutives aux conditions de la persécution ou aux actes des persécuteurs, ainsi que de la mort ou de la disparition des témoins et des victimes à la suite de la persécution;

(d) à ce que soient assurées l'efficacité et la rapidité des procédures, des décisions et de leur exécution, en ce qui concerne les demandes d'indemnisation présentées dans ce domaine, sans qu'il y ait discrimination à l'égard d'aucun groupe ou d'aucune catégorie de personnes persécutées;

(e) that in all cases where a claim for compensation submitted to the competent authorities has been disallowed under the legislation then in force, but where such a claim would be admissible under supplementary or replacement legislation enacted in accordance with sub-paragraph (b) of this paragraph, the persecuted person shall be assured the possibility of submitting again his claim in spite of the previous rejection thereof;

(f) that the provision of funds adequate to meet all claims under the legislation referred to in sub-paragraphs (a) and (b) of this paragraph shall be ensured by the Federal Republic in accordance with paragraph 3 of this Chapter.

3. The capacity to pay of the Federal Republic may be taken into consideration in determining the time and method of compensation payments under paragraph 1 of this Chapter and in providing adequate funds under sub-paragraph (f) of paragraph 2.

## CHAPTER FIVE

## External Restitution

### Article 1

1. Upon the entry into force of the present Convention, the Federal Republic shall establish, staff and equip an administrative agency which shall, as provided in this Chapter and the Annex thereto, search for, recover and restitute jewellery, silverware and antique furniture (where individual articles are of substantial value), and cultural property, if such articles or cultural property were, during the occupation of any territory, removed therefrom by the forces or authorities of Germany or its Allies or their individual members (whether or not pursuant to orders) after acquisition by duress (with or without violence), by larceny, by requisitioning or by other forms of dispossession by force.

2. In the case of cultural property which was present in the country concerned prior to the date applicable to that country as specified in Article 5 of this Chapter, restitution shall also be made

(a) if it was acquired by way of gift made under direct or indirect pressure or in consideration of the official position of the recipient;

(e) à ce que, dans tous les cas où une demande d'indemnisation présentée aux autorités compétentes a déjà été rejetée en vertu de la législation alors en vigueur, mais où cette même demande serait recevable en vertu d'une législation de complément ou de remplacement édictée conformément à l'alinéa (b) du présent paragraphe, la possibilité soit assurée à la victime de présenter à nouveau sa demande, malgré le précédent rejet de celle-ci;

(f) à ce que la fourniture de fonds, dans une mesure appropriée au paiement de toutes les demandes admises en application de la législation visée aux alinéas (a) et (b) du présent paragraphe soit assurée par la République Fédérale conformément au paragraphe 3 du présent Article.

3. — La capacité de paiement de la République Fédérale pourra être prise en considération pour la détermination de l'époque et de la méthode des paiements d'indemnisation visés au paragraphe 1 du présent Article et lors de la fourniture des fonds appropriés en application de l'alinéa (f) du paragraphe 2 du même Article.

## CHAPITRE CINQUIEME

## Restitutions Externes

### Article 1

1. — Lors de l'entrée en vigueur de la présente Convention, la République Fédérale instituera et équipera une agence administrative, dont elle recrutera le personnel, qui sera chargée, dans les conditions prévues dans le présent Chapitre et dans l'Annexe qui lui est jointe, de la recherche, de la récupération et de la restitution des bijoux, de l'argenterie et des meubles anciens (lorsque chacun de ces objets est d'une valeur substantielle) et des biens culturels, si ces objets ou biens culturels ont été au cours de l'occupation d'un territoire, enlevés de ce territoire par les forces ou les autorités de l'Allemagne ou de ses alliés ou par leurs membres individuellement, que ce soit par ordre ou sans ordre, à la suite d'une acquisition par contrainte, avec ou sans violence, par vol, par réquisition ou par toute autre forme de dépossession forcée.

2. — Dans le cas de biens culturels qui se trouvaient dans le pays intéressé antérieurement à la date applicable à ce pays, telle qu'elle est spécifiée à l'Article 5 du présent Chapitre, la restitution sera également opérée

(a) si ces biens ont été acquis par voie de don effectué sous une pression directe ou indirecte, ou en raison de la position officielle du donataire;

(b) if it was acquired by way of purchase, unless it had been brought into the country concerned for the purpose of sale.

3. In the case of jewellery, silverware or antique furniture, restitution may be denied if it is established that the property concerned was removed after acquisition from the original owner for value by way of a regular commercial transaction, even if payment was made in occupation currency.

4. The term "cultural property" shall comprise movable goods of religious, artistic, documentary, scholary or historic value, or of equivalent importance, including objects customarily found in museums, public or private collections, libraries or historic archives. The term "antique" shall mean property which upon the entry into force of the present Convention is one hundred or more years old. The term "substantial value" shall mean a value of not less than 200.000 French francs at the 1 January 1951 purchasing power.

5. The agency referred to in paragraph 1 of this Article will give information on matters dealt with by it to the Three Powers or their representatives on request and submit quarterly reports on its activity. The records of the agency shall be preserved until otherwise agreed.

### Article 2

1. Restitution pursuant to Article 1 of this Chapter may be requested from the Federal Government only by the Government of the State from the territory of which the property was removed. The Federal Government may reject a restitution request if such request has already been rejected as not well founded by the appropriate agency of one of the Three Powers, except in a case where evidence which could not previously be presented is adduced.

2. Restitution of jewellery, silverware or antique furniture may only be claimed from the Federal Government if a pertinent request has been lodged with an agency of any of the Three Powers prior to the entry into force of the present Convention. In the case of cultural property, no new claim for restitution may be filed after 8 May 1956. Where, in any particular case, the investigations of the German agency referred to in Article 1 of this Chapter with respect to claimed property have been unsuccessful or where they have not led to the discovery of the claimed property by 8 May 1957, and where further investigations are unlikely to be successful, the agency shall discontinue the proceedings. Such a decision may be appealed from by the party con-

(b) s'ils ont été acquis par voie d'achat, à moins que les biens n'aient été introduits dans le pays intéressé aux fins de revente.

3. — Dans le cas des bijoux, de l'argenterie ou des meubles anciens, la restitution peut être refusée s'il est établi que le bien en cause a été enlevé après avoir été acquis du propriétaire primitif contre paiement dans le cadre d'une opération commerciale régulière, même si le règlement en a été opéré en monnaie d'occupation.

4. — L'expression « biens culturels » désigne les biens mobiliers présentant une valeur religieuse, artistique, documentaire, éducative ou historique ou une importance équivalente; cette définition comprend les objets du genre de ceux qui se trouvent habituellement dans les musées, les collections publiques ou privées, les bibliothèques ou les archives historiques. Le terme « ancien » s'applique aux meubles datant de cent ans ou plus à la date d'entrée en vigueur de la présente Convention. L'expression « valeur substantielle » signifie une valeur au moins égale à 200.000 francs francais, compte tenu du pouvoir d'achat du france au 1er janvier 1951.

5. — L'agence visée au paragraphe 1 du présent Article communiquera aux Trois Puissances ou à leurs représentants, sur demande, des renseignements sur les matières qu'elle traite et fournira des rapports trimestriels sur son activité. Les archives de l'agence seront conservées jusqu'à ce qu'il en ait été convenu autrement.

### Article 2

1. — Toute restitution en application de l'Article 1 du présent Chapitre ne peut être demandée au Gouvernement Fédéral que par le Gouvernement de l'État du territoire duquel le bien a été enlevé. Le Gouvernement Fédéral peut rejeter une demande de restitution si cette demande a été déjà rejetée comme non fondée par l'organisme compétent de l'une des Trois Puissances, sauf dans le cas où est fournie une preuve qui n'a pu être produite antérieurement.

2. — La restitution de bijoux, d'argenterie ou de meubles anciens ne peut être demandée au Gouvernement Fédéral que si une demande s'y rapportant a été recue par un organisme de l'une des Trois Puissances avant l'entrée en vigueur de la présente Convention. Dans le cas de biens culturels, aucune nouvelle demande de restitution ne pourra être présentée après le 8 mai 1956. Lorsque, dans un cas particulier, les enquêtes menées, en ce qui concerne les biens réclamés, par l'agence allemande visée à l'Article 1 du présent Chapitre, ont été infructueuses ou n'ont pas conduit à la découverte des biens réclamés avant le 8 mai 1957, et que la reussite de nouvelles enquêtes est improbable, l'agence arrêtera la procédure. La partie intéressée

cerned to the Arbitral Commission on Property, Rights and Interests in Germany pursuant to Article 7. If, after such discontinuance, the claimed property is identified, the restitution proceedings may be reopened.

3. Claims filed with an agency of any of the Three Powers and not finally disposed of prior to the entry into force of the present Convention and falling within the scope of the provisions of Article 1 of this Chapter and this Article shall be referred by the Power concerned to the German agency referred to in Article 1. They shall be acted upon by the German agency as though filed directly with it by the claimant Government.

4. Submission of a claim for restitution pursuant to Article 1 of this Chapter on behalf on any person or entity shall preclude such submission pursuant to Article 3; likewise, action for restitution pursuant to Article 3 shall preclude submission of a claim for restitution pursuant to Article 1.

### Article 3

1. Notwithstanding provisions of German law to the contrary, any person who, or whose predecessor in title, during the occupation of a territory, has been dispossessed of his property by larceny or by duress (with or without violence) by the forces or authorities of Germany or its Allies, or their individual members (whether or not pursuant to orders), shall have a claim against the present possessor of such property for its restitution, subject, however, to:

(a) reimbursement by the claimant to the defendant for expenditures, which have enhanced the value of the property, made after its acquisition;

(b) payment by the claimant of the value of any consideration received by him or his predecessor in title, which shall be treated in the same manner as German assets existing at the date of removal in the country from which the property was removed.

No such claim shall exist if the present possessor has possessed the property bona fide for ten years or until 8 May 1956, whichever is later.

2. Any claim to restitution pursuant to paragraph 1 of this Article may be brought before a German court on or before 8 May 1956 or before the expiration of ten years during which the possessor possessed the

pourra se pourvoir en appel contre cette décision devant la Commission Arbitrale sur les Biens, Droits et Intérêts en Allemagne conformément à l'Article 7. Si, après l'arrêt de la procédure, les biens réclamés sont identifiés, la procédure de restitution peut être ouverte à nouveau.

3. — Les demandes recues par un organisme de l'une des Trois Puissances, qui n'ont pas été définitivement réglées avant l'entrée en vigueur de la présente Convention, et qui relèvent du champ d'application des dispositions de l'Article 1 du présent Chapitre et du présent Article, seront renvoyées par la Puissance intéressée à l'agence allemande visée à l'Article 1. Celle-ci prendra toutes mesures à leur égard dans les mêmes conditions que si ces demandes avaient été présentées directement à l'agence allemande par le Gouvernement réclamant.

4. — La présentation d'une demande de restitution en vertu de l'Article 1 du présent Chapitre pour le compte d'une personne physique ou d'une entité juridique fera obstacle à la présentation de cette demande en vertu de l'Article 3; de même, une action en restitution en vertu de l'Article 3 fera obstacle à la présentation d'une demande de restitution en vertu de l'Article 1.

### Article 3

1. — Nonobstant les dispositions contraires du droit allemand, toute personne qui a, ou dont le prédécesseur légal a, pendant l'occupation d'un territoire, été dépossédé de ses biens par vol ou par contrainte avec ou sans violence, par les forces ou les autorités de l'Allemagne ou de ses alliés, ou par leurs membres individuellement, que ce soit par ordre ou sans ordre, aura un droit à restitution concernant ces biens à l'encontre de leur possesseur actuel, sous réserve, toutefois :

(a) du remboursement par le demandeur au défendeur des dépenses qui ont augmenté la valeur des biens et qui ont été faites après leur acquisition, et

(b) du paiement par le demandeur de la valeur de toute contrepartie recue par lui ou par son prédécesseur légal, qui sera traitée de la même manière que les avoirs allemands existant à la date de l'enlèvement dans le pays d'où les biens ont été enlevés.

Un tel droit n'existera pas si le possesseur actuel a exercé sur les biens une possession de bonne foi pendant dix ans ou jusqu'au 8 mai 1956, selon celle de ces deux dates qui sera la plus éloignée.

2. — Tout ressortissant ou résidant d'un État ayant accédé à la Charte de la Commission Arbitrale sur les Biens, Droits et Intérêts en Allemagne peut introduire devant un tribunal allemand une action en restitution en

property bona fide, whichever is later, by any national or resident of a State which has acceded to the Charter of the Arbitral Commission on Property, Rights and Interests in Germany.

3. No restitution claim may be asserted, if, prior to the entry into force of the present Convention, a request by a Government on behalf of the claimant for restitution of the property concerned was rejected as not well founded by an agency of one of the Three Powers, except in a case where evidence which could not previously be presented is adduced.

## Article 4

1. If property to be restituted has, after identification in Germany, either been utilized or consumed in Germany before return to the claimant or been destroyed, stolen or otherwise disposed of before receipt by the claimant Government or by an appropriate agency of one of the Three Powers for despatch to the claimant, the Federal Republic shall compensate claimants who would otherwise be entitled to restitution under Article 1 or 3 of this Chapter, or who, at the entry into force of the present Convention, have had their claims for restitution approved by one of the Three Powers.

2. The German agency referred to in Article 1 of this Chapter shall, upon application by the claimant otherwise entitled to restitution, render a decision on the compensation claim in respect of property the restitution of which could have been requested under Articles 1 and 2. The court stipulated in Article 3 shall, upon suit brought by the claimant otherwise entitled to restitution, render a decision on the compensation claim in respect of property the restitution of which could have been requested under Article 3, provided that the plaintiff is a national or a resident of a State which has acceded to the Charter of the Arbitral Commission on Property, Rights and Interests in Germany. The filing of the application and the bringing of the suit must take place not later than one year after the entry into force of the present Convention or one year after notification to the claimant that the property is not available for restitution, whichever is later.

3. Notwithstanding the provisions of paragraph 2 of this Article, claims falling within the scope of paragraph 1 filed with an agency of any of the Three Powers before the entry into force of the present Convention may either be referred by that Power to the German agency referred to in Ar-

vertu du paragraphe 1 du présent Article, au plus tard le 8 mai 1956, ou avant la date d'expiration d'une période de dix années pendant laquelle le possesseur aura exercé sur les biens une possession de bonne foi, selon celle de ces deux dates qui sera la plus éloignée.

3. — Aucune demande de restitution ne peut être présentée si, avant l'entrée en vigueur de la présente Convention, une demande présentée par un Gouvernement pour le compte du réclamant et tendant à la restitution des biens en cause a été rejetée comme non fondée par un organisme de l'une des Trois Puissances, sauf dans le cas où est fournie une preuve qui n'a pu être produite antérieurement.

## Article 4

1. — Si un bien à restituer a été, après son identification en Allemagne, soit utilisé ou consommé en Allemagne avant sa restitution au demandeur, soit détruit ou volé, ou s'il en a été autrement disposé avant sa remise au Gouvernement réclamant ou à l'organisme compétent de l'une des Trois Puissances pour être remis au demandeur, la République Fédérale indemnisera les demandeurs qui auraient autrement droit à restitution en vertu des Articles 1 ou 3 du présent Chapitre ou dont les demandes de restitution ont été, à la date d'entrée en vigueur de la présente Convention, approuvées par l'une des Trois Puissances.

2. — Sur requête du demandeur qui aurait autrement droit à restitution, l'agence allemande visée à l'Article 1 du présent Chapitre rendra une décision sur la demande d'indemnisation relative au bien dont la restitution aurait pu être demandée en vertu des Articles 1 et 2. Sur introduction d'une instance par le demandeur qui aurait autrement droit à restitution, le tribunal visé à l'Article 3 rendra une décision sur la demande d'indemnisation relative au bien dont la restitution aurait pu être demandée en vertu de l'Article 3, à condition que le demandeur soit un ressortissant ou un résidant d'un Etat ayant accédé à la Charte de la Commission Arbitrale sur les Biens, Droits et Intérêts en Allemagne. Le dépôt de la requête et l'introduction de l'instance doivent être effectués dans l'année qui suit l'entrée en vigueur de la présente Convention ou dans l'année qui suit la notification au demandeur que le bien n'est plus restituable, selon celui des deux délais qui sera le plus long.

3. — Par dérogation aux dispositions du paragraphe 2 du présent Article, les demandes tombant sous le coup du paragraphe 1, qui ont été présentées à un organisme de l'une des Trois Puissances avant l'entrée en vigueur de la présente Convention, peuvent être renvoyées par cette Puissance à

ticle 1 of this Chapter or be filed with that agency by the claimant Government. All claims under this paragraph shall be referred to or filed with the agency not later than six months after the entry into force of the present Convention and shall be decided by it.

4. The German agency referred to in Article 1 of this Chapter shall recognize claims for restitution which have been approved by any of the Three Powers prior to the entry into force of the present Convention. The agency shall also accept as conclusive a certificate by any one of the Three Powers that the property which was the subject of the claim had not been received by an appropriate agency of that Power for despatch to the claimant.

5. Compensation pursuant to this Article shall be awarded in the amount of the replacement value of the property concerned as of the date of the award.

### Article 5

1. The provisions of this Chapter shall apply in respect of the following countries as of the respective date set forth below:

| Country | Date |
|---|---|
| Austria | 12 March 1938 |
| Czechoslovakia | 1 April 1939 |
| Poland | 1 September 1939 |
| Denmark | 9 April 1940 |
| Norway | 9 April 1940 |
| Belgium | 10 May 1940 |
| Luxembourg | 10 May 1940 |
| Netherlands | 10 May 1940 |
| France | 17 May 1940 |
| Greece | 28 October 1940 |
| Yugoslavia | 6 April 1941 |
| Union of Soviet Socialist Republics | 22 June 1941 |
| Italy | 3 September 1943 |
| Rumania | 12 September 1944 |
| Finland | 19 September 1944 |
| Bulgaria | 28 October 1944 |
| Hungary | 20 January 1945 |

2. The provisions of this Chapter shall cover public and private property which was removed from territories referred to in paragraph 1 of this Article.

### Article 6

If the Federal Republic concludes with any other Power, on matters within the scope of this Chapter, arrangements more favourable to such other Power than the corresponding provisions of this Chapter, the benefits of such new arrangements shall automatically be extended to all powers benefiting from those provisions.

l'agence allemande visée à l'Article 1 du présent Chapitre ou peuvent être présentées à cette agence par le Gouvernement demandeur. Toutes les demandes visées au présent paragraphe seront renvoyées à l'agence ou lui seront présentées dans les six mois suivant l'entrée en vigueur de la présente Convention et feront l'objet d'une décision de la part de cette agence.

4. — L'agence allemande visée à l'Article 1 du présent Chapitre reconnaîtra les demandes de restitution qui auront été approuvées par l'une des Trois Puissances avant l'entrée en vigueur de la présente Convention. L'agence considérera également comme probant un certificat délivré par l'une des Trois Puissances, indiquant que le bien faisant l'objet de la demande n'a pas été remis à un organisme compétent de cette Puissance, pour transmission au demandeur.

5. — Les indemnisations accordées en vertu du présent Article seront fixées selon la somme correspondant à la valeur de remplacement du bien en cause à la date de la décision d'indemnisation.

### Article 5

1. — Les dispositions du présent Chapitre s'appliquent à l'égard des pays ci-après, à compter des dates respectives indiquées ci-dessous:

| Pays | Date |
|---|---|
| Autriche | 12 mars 1938 |
| Tchécoslovaquie | 1er avril 1939 |
| Pologne | 1er septembre 1939 |
| Danemark | 9 avril 1940 |
| Norvège | 9 avril 1940 |
| Belgique | 10 mai 1940 |
| Luxembourg | 10 mai 1940 |
| Pays-Bas | 10 mai 1940 |
| France | 17 mai 1940 |
| Grèce | 28 octobre 1940 |
| Yougoslavie | 6 avril 1941 |
| Union des Républiques Socialistes Soviétiques | 22 juin 1941 |
| Italie | 3 septembre 1943 |
| Roumanie | 12 septembre 1944 |
| Finlande | 19 septembre 1944 |
| Bulgarie | 28 octobre 1944 |
| Hongrie | 20 janvier 1945 |

2. — Les dispositions du présent Chapitre s'appliquent aux biens publics et privés, qui ont été enlevés des territoires visés au paragraphe 1 du présent Article.

### Article 6

Si la République Fédérale conclut avec toute autre Puissance, en des matières couvertes par le présent Chapitre, des arrangements plus favorables pour cette Puissance que les dispositions correspondantes du présent Chapitre, le bénéfice de ces nouveaux arrangements sera étendu automatiquement à toutes les Puissances bénéficiant des dispositions correspondantes du présent Chapitre.

### Article 7

1. The Signatory States hereby establish an Arbitral Commission on Property, Rights and Interests in Germany, which shall function in accordance with the provisions of its Charter annexed to the present Convention.

2. Upon application of the party concerned, any final decision (Endentscheidung) by the German agency pursuant to Articles 1, 2 or 4 of this Chapter, or by a German court pursuant to Articles 3 or 4, shall be subject to review by the Arbitral Commission on Property, Rights and Interests in Germany.

3. Application to the Commission shall be submitted by the party concerned within thirty days after service of such decision. If the German agency or the German court does not render a decision within one year after submission of the claim, the claimant may submit his claim directly to the Commission within thirty days following the expiration of the one year period.

4. In any case submitted to it, the Commission may itself render a final decision in regard to such case or may remand it to the German agency or to the German court with such instructions as the Commission deems necessary or appropriate.

5. The judgments of the Commission shall be final and binding on the authorities and courts of the Signatory States and other States acceding to its Charter.

## ANNEX
## TO CHAPTER FIVE

### Section 1

1. The Federal Government shall establish the administrative agency provided for in paragraph 1 of Article 1 of the foregoing Chapter as a Federal Higher Authority (Bundesoberbehörde).

2. All German courts and authorities shall render the Federal Higher Authority legal and other official assistance pursuant to Article 35 of the Basic Law.

### Section 2

1. Applications for restitution pursuant to Articles 1 and 2 of the foregoing Chapter, with the exception of those specified in paragraph 3 of Article 2, shall include

(a) a description of the property restitution of which is demanded;

(b) when possible, identification of the person possessing such property at the time of filing of the application;

(c) a description of the facts on which the restitution claim is based.

### Article 7

1. — Les Etats Signataires instituent une Commission Arbitrale sur les Biens, Droits et Intérêts en Allemagne dont le fonctionnement sera régi par les dispositions de la Charte annexée à la présente Convention.

2. — Sur demande de la partie intéressée, toute décision définitive (Endentscheidung) de l'agence allemande en vertu des Articles 1, 2 ou 4 du présent Chapitre, ou d'un tribunal allemand en vertu des Articles 3 ou 4, sera sujette à révision de la part de la Commission Arbitrale sur les Biens, Droits et Intérêts en Allemagne.

3. — La partie intéressée soumettra sa demande à la Commission dans les trente jours après que cette décision lui aura été signifiée. Si l'agence allemande ou le tribunal allemand ne rend pas de décision dans l'année suivant la présentation de la demande, le demandeur pourra soumettre sa demande directement à la Commission dans les trente jours suivant l'expiration de cette période d'une année.

4. — Dans toute affaire qui lui sera soumise, la Commission pourra rendre elle-même une décision définitive ou renvoyer l'affaire à l'agence allemande ou au tribunal allemand avec les instructions que la Commission estimera nécessaires ou appropriées.

5. — Les jugements de la Commission seront définitifs et lieront les autorités et les tribunaux des Etats Signataires et des autres Etats ayant accédé à la Charte.

## ANNEXE
## AU CHAPITRE CINQUIEME

### Paragraphe 1

1. — Le Gouvernement Fédéral instituera en tant qu Autorité Fédérale Supérieure (Bundesoberbehörde) l'agence administrative prévue au paragraphe 1 de l'Article 1 du Chapitre qui précede.

2. — Tous les tribunaux allemands et autorités allemandes doivent, conformément à l'Article 35 de la Loi Fondamentale, prêter une aide judiciaire et administrative à cette Autorité Fédérale Supérieure.

### Paragraphe 2

1. — Les demandes de restitution présentées conformément aux Articles 1 et 2 du Chapitre qui précède, à l'exclusion de celles désignées au paragraphe 3 de l'Article 2, doivent comporter :

(a) la désignation du bien dont la restitution est demandée ;

(b) autant que possible, l'indication de la personne entre les mains de laquelle se trouve ce bier au moment de la presentation demande ;

(c) un exposé des faits mc demande en restitution.

2. Certified copies of the documents supporting the restitution claim shall be attached to the application or shall be subsequently submitted.

### Section 3

1. Applications for compensation pursuant to Article 4 of the foregoing Chapter, with the exception of those specified in paragraph 3 of that Article, shall include

(a) a description of the property in respect of which compensation is demanded;

(b) information relating to the identification in Germany of such property;

(c) information relating to the utilization, consumption, destruction, theft or disposal of such property;

(d) notice of the amount claimed;

(e) information concerning any other matters on which the claim is based.

2. Certified copies of the documents supporting the compensation claim shall be attached to the application or shall be subsequently submitted.

### Section 4

Proceedings before the Federal Higher Authority shall be free of charge.

### Section 5

1. The Federal Higher Authority shall conduct the necessary investigations. For this purpose it may on its own motion (von Amts wegen) take evidence by accelerated procedure; in particular, it may hear witnesses, experts and the persons whose rights are affected by the restitution or cause their hearing before a court. Where a hearing under oath appears necessary, such oath shall be sworn before a court. The Federal Higher Authority shall be authorized to accept statements in lieu of oaths (eidesstattliche Versicherungen).

2. In addition to the applying Government, all persons shall be considered parties concerned whose rights would be affected by the restitution.

3. The parties concerned shall be afforded an opportunity to state their views. They may be represented by agents or counsel. They shall be notified of the dates of the hearings ordered for the purpose of interrogations pursuant to the second sentence of paragraph 1 of this Section and may attend these hearings. The documents filed by a party concerned shall be transmitted to the other parties.

2. — Des copies certifiées conformes des pièces venant à l'appui de la demande de restitution doivent être jointes à cette demande ou présentées ultérieurement.

### Paragraphe 3

1. — Les demandes d'indemnisation présentées conformément à l'Article 4 du Chapitre qui précède, à l'exclusion de celles désignées au paragraphe 3 dudit Article doivent comporter :

(a) la désignation du bien qui fait l'objet d'une demande d'indemnisation ;

(b) les renseignements relatifs à l'identification en Allemagne de ce bien ;

(c) les renseignements relatifs à l'utilisation, la consommation, la destruction, le vol ou la cession de ce bien ;

(d) une indication de la somme réclamée ;

(e) les renseignements relatifs à tout autre fait motivant la demande.

2. — Des copies certifiées conformes des pièces venant à l'appui de la demande d'indemnisation doivent être jointes à cette demande ou présentées ultérieurement.

### Paragraphe 4

La procédure devant l'Autorité Fédérale Supérieure est exempte de frais.

### Paragraphe 5

1. — L'Autorité Fédérale Supérieure procède aux enquêtes nécessaires. Elle peut, à cet effet, procéder d'office (von Amts wegen) à la recherche de preuves par une procédure accélérée, et, en particulier, procéder ou faire procéder par un tribunal à l'audition de témoins, d'experts ou de personnes dont les droits seraient affectés par la restitution. Chaque fois qu'il apparaît nécessaire de faire prêter serment, ce serment doit être prêté devant un tribunal. L'Autorité Fédérale Supérieure est compétente pour recevoir toute déclaration écrite tenant lieu de serment (eidesstattliche Versicherung).

2. — Sont considérées comme parties intéressées, outre le Gouvernement demandeur, toutes personnes dont les droits seraient affectés par la restitution.

3. — Les parties intéressées doivent se voir accorder la possibilité d'exposer leur point de vue. Elles peuvent se faire représenter par des agents ou des conseils. Elles doivent être avisées des dates des audiences fixées pour les auditions prévues à la seconde phrase de l'alinéa 1 du présent paragraphe, et peuvent assister à ces audiences. Les pièces soumises par l'une des parties intéressées doivent être communiquées aux autres parties.

### Section 6

Where realization of the restitution claim appears to be endangered, the Federal Higher Authority shall order the necessary interim measures to be taken for safeguarding the property.

### Section 7

Decisions of the Federal Higher Authority shall state in writing the reasons on which they are based and shall be served upon the parties concerned.

### Section 8

1. The Federal Higher Authority shall take all measures required for the restitution. Where necessary the Federal Higher Authority shall order that property to be restituted shall be expropriated in favour of the Federal Republic, which will forward (zuleiten) it to the restitution claimant.

2. The nature and amount of the compensation to persons affected by the expropriation shall be fixed by a Federal law

3. Where the Federal Higher Authority allows a claim under Article 4 of the foregoing Chapter, it shall fix the amount of the compensation to be paid by the Federal Republic.

## CHAPTER SIX

## Reparation

### Article 1

1. The problem of reparation shall be settled by the peace treaty between Germany and its former enemies or by earlier agreements concerning this matter. The Three Powers undertake that they will at no time assert any claim for reparation against the current production of the Federal Republic.

2. Pending the final settlement envisaged in paragraph 1 of this Article, the following provisions shall apply.

### Article 2

Control Council Law No. 5 is deprived of effect in the Federal territory, except in respect of the countries listed in the Schedule to Allied High Commission Law No. 63, as amended by Decision No. 24 of the Allied High Commission, but shall not be further deprived of effect or amended without the consent of the Three Powers. The Federal Republic will not repeal or amend Law No. 63 except with the consent of the Three Powers. However, paragraph 1 of Article 6 of Law No. 63 shall be deemed to be repealed and para-

### Paragraphe 6

L'Autorité Fédérale Supérieure doit, lorsque la réalisation du droit à restitution lui paraît menacée, ordonner toutes mesures conservatoires nécessaires à la sauvegarde du bien en cause.

### Paragraphe 7

Toute décision de l'Autorité Fédérale Supérieure doit être motivée par écrit et notifiée aux parties intéressés.

### Paragraphe 8

1. — L'Autorité Fédérale Supérieure prend toutes mesures en vue de la restitution. S'il est nécessaire, elle ordonne que les biens à restituer soient expropriés au profit de la République Fédérale qui les transférera (zuleiten) aux ayants-droit à restitution.

2. — Une loi fédérale réglera la nature et le montant de l'indemnisation de personnes atteintes par l'expropriation.

3. — Lorsque l'Autorité Fédérale Supérieure fera droit à une demande visée à l'Article 4 du Chapitre qui précède, elle fixera le montant de l'indemnisation à verser par la République Fédérale.

## CHAPITRE SIXIEME

## Réparations

### Article 1

1. — La question des réparations sera réglée par le Traité de Paix entre l'Allemagne et ses anciens ennemis ou par des accords antérieurs relatifs à cette question. Les Trois Puissances s'engagent à ne pas présenter, à un moment quelconque, de demandes de réparations sur la production courante de la République Fédérale.

2. — En attendant le réglement final prévu au paragraphe 1 du présent Article, les dispositions ci-dessous s'appliqueront.

### Article 2

Le Loi N° 5 du Conseil de Contrôle est dépourvue d'effet sur le territoire fédéral, sauf en ce qui concerne les pays figurant sur la liste annexée à la Loi N° 63 de la Haute Commission Alliée, modifiée par la Décision N° 24 de la Haute Commission Alliés, mais ne pourra faire, dans l'avenir, l'objet de privation d'effet ou d'amendements sans le consentement des Trois Puissances. La République Fédérale n'abrogera ni n'amendera la Loi N° 63 de la Haute Commission Alliée, sauf consentement des Trois Puissances. Toutefois, le paragraphe 1 de l'Article 6

graph 2 to be amended to provide that the powers therein conferred upon the Allied High Commission may be exercised by the Federal Government. The Federal Republic undertakes that appropriate decisions under Article 6 of Law No. 63, as so amended, removing the countries from the list in the Schedule thereto shall be issued after the Three Powers have consented.

### Article 3

1. The Federal Republic shall in the future raise no objections against the measures which have been, or will be, carried out with regard to German external assets or other property, seized for the purpose of reparation or restitution, or as a result of the state of war, or on the basis of agreements concluded, or to be concluded, by the Three Powers with other Allied countries, neutral countries or former allies of Germany.

2. The Federal Republic shall abide by such provisions regulating German external assets in Austria as are set forth in any agreement to which the Powers now in occupation of Austria are parties or as may be contained in the future State Treaty with Austria.

3. No claim or action shall be admissible against persons who shall have acquired or transferred title to property on the basis of the measures referred to in paragraph 1 and 2 of this Article, or against international organizations, foreign governments or persons who have acted upon instructions of such organizations or governments.

### Article 4

1. Where German external assets have not been transferred or liquidated, or where no disposition has been made in respect of the proceeds of their liquidation, the Federal Republic may negotiate agreements regarding them with all countries which have been at war with Germany since 1 September 1939 but are not members of the Inter-Allied Reparation Agency (IARA).

2. Moreover, the Federal Republic may negotiate agreements with the member countries of IARA, provided such agreements relate only to

(a) property of the types which member countries of the IARA may, under Part III of the IARA account-

de la Loi N° 63 sera considéré comme abrogé, et le paragraphe 2 sera considéré comme amendé en ce sens que les pouvoirs conférés à la Haute Commission Alliée par ces dispositions pourront être exercés par le Gouvernement Fédéral. La République Fédérale s'engage à ce que des décisions appropriées, en vertu de "Article 6 de la Loi N° 63 ainsi amendée, supprimant tout pays de la liste annexée à ladite Loi, soient édictées lorsque les Trois Puissances auront donné leur consentement à une telle mesure.

### Article 3

1. — La République Fédérale ne soulèvera, dans l'avenir, aucune objection contre les mesures qui ont été prises ou qui seront prises à l'égard des avoirs allemands à l'étranger ou des autres biens saisis au titre des réparations ou des restitutions, ou en raison de l'état de guerre, ou en se fondant sur les accords que les Trois Puissances ont conclus ou pourront conclure avec d'autres pays alliés, avec des pays neutres ou avec d'anciens alliés de l'Allemagne.

2. — La République Fédérale se conformera aux dispositions relatives aux avoirs allemands en Autriche, qui figurent dans tout accord auquel les Puissances actuellement en occupation en Autriche sont partie ou qui pourront figurer dans le futur Traité d'Etat avec l'Autriche.

3. — Ne sont pas recevables les réclamations et les actions dirigées contre des personnes qui ont acquis ou transféré des droits de propriété, en vertu des mesures visées aux paragraphes 1 et 2 du présent Article, ainsi que contre des organismes internationaux, des gouvernements étrangers ou des personnes qui ont agi sur instruction de ces organismes ou de ces gouvernements étrangers.

### Article 4

1. — Dans les cas où les avoirs allemands à l'étranger n'ont pas été transférés ou liquidés, ou lorsqu'aucune mesure de disposition n'a été prise à l'égard des produits de leur liquidation, la République Fédérale peut négocier des accords concernant ces avoirs avec tous les pays qui ont été en guerre avec l'Allemagne depuis le 1er septembre 1939, mais qui ne sont pas membres de l'Agence Interalliée des Réparations (IARA).

2. — En outre, la République Fédérale peut négocier des accords avec les pays membres de l'IARA, sous réserve que ces accords visent uniquement:

(a) les biens appartenant aux catégories que les pays membres de l'IARA sont, en vertu du Titre III ing rules, voluntarily exclude from the charge to be made under Part II of the rules;

(b) securities of German issue expressed in Reichsmarks;

(c) pensions;

(d) a final date for sequestration of German property in countries in which such a date has not yet been determined.

3. Regarding property taken as German assets in Portugal, Spain, Sweden and Switzerland with respect to which agreements concluded by the Three Powers are, or will be, in force, the Federal Republic may negotiate with those countries arrangements in implementation of such agreements concerning the nature and amount of compensation to be paid to former German owners of assets in those countries. The Three Powers shall have the right to participate in such negotiations.

4. Apart from the questions referred to in the preceding paragraphs of this Article, the Federal Republic may, after due notification to the Three Powers negotiate with any country agreements on other questions concerning German external assets unless the Three Powers specifically object thereto.

### Article 5

The Federal Republic shall ensure that the former owners of property seized pursuant to the measures referred to in Articles 2 and 3 of this Chapter shall be compensated.

## CHAPTER SEVEN

### Displaced Persons and Refugees

### Article 1

The Federal Republic undertakes

(a) Deleted.
(b) Deleted.
(c) Deleted.

(d) to assure the continuance of the operations presently carried out by the International Tracing Service;

(e) to assume the proper care and maintenance of the graves of Allied civilian war victims (unless otherwise provided for by the nations concerned), displaced persons and non-German refugees in the Federal territory and to facilitate pilgrimages by relatives to these graves;

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des règles de comptabilisation de l'IARA, en droit d'exclure volontairement du montant à porter à leur débit conformément aux dispositions du Titre II de ces règles;

(b) les titres d'émission allemande libellés en Reichsmark;

(c) les pensions;

(d) une date limite pour la mise sous séquestre des biens allemands dans les pays dans lesquels une telle date n'a pas encore été déterminée.

3. — En ce qui concerne les biens pris ou bloqués en tant qu'avoirs allemands à l'étranger en Espagne, au Portugal, en Suède et en Suisse, au sujet desquels des accords conclus par les Trois Puissances sont ou seront en vigueur la République Fédérale peut négocier avec ces Etats des arrangements pour l'application de ces accords et relatifs à la nature et au montant de l'indemnisation à accorder aux anciens propriétaires allemands de biens situés dans ces pays. Les Trois Puissances auront le droit de participer à ces négociations.

4. — Exception faite des problèmes visés aux paragraphes précédents du présent Article, la République Fédérale peut, après en avoir dûment avisé les Trois Puissances, négocier avec tout Etat des accords sur d'autres questions concernant les avoirs allemands à l'étranger, à moins que les Trois Puissances ne s'y opposent de manière expresse.

### Article 5

La République Fédérale veillera à ce que les anciens propriétaires de biens saisis en exécution des mesures visées aux Articles 2 et 3 du présent Chapitre reçoivent une indemnisation.

## CHAPITRE SEPTIEME

### Personnes Déplacées et Réfugiés

### Article 1

La République Fédérale s'engage:

(a) supprimé;
(b) supprimé;
(c) supprimé;

(d) à assurer la continuation des opérations actuellement effectuées par le Service International des Recherches;

(e) à assumer l'entretien et la conservation sur le territoire fédéral des tombes des victimes civiles alliées de la guerre (à moins qu'il n'y soit autrement pourvu par les nations intéressées), et des tombes des personnes déplacées et des réfugiés non allemands, ainsi qu'à faciliter les pèlerinages des membres des familles des morts sur ces tombes;

(f) to afford to the authorities of the Three Powers and other Allied nations concerned the same facilities as they now enjoy for the exhumation and removal of bodies of war victims.

### Article 2

The Federal Republic will see to the proper care and maintenance of the graves of Allied soldiers in the Federal territory, unless otherwise provided for by the nations concerned or by organizations of such nations serving that purpose, and will facilitate the work of such organizations. Each of the Three Powers will see to the proper care and maintenance of the graves of German soldiers in its metropolitan territory and will facilitate the activities of organizations serving that purpose.

### Article 3

Deleted.

### Article 4

The Three Powers declare themselves willing to conduct, when the necessity arises, negotiations concerning the transfer of refugees to the Federal territory with the Governments of those countries in which the Federal Republic has no diplomatic representation.

## CHAPTER EIGHT

### Claims against Germany

Deleted with Annex.

## CHAPTER NINE

### Claims against Foreign Nations or Nationals

### Article 1

Without prejudice to the terms of a peace settlement with Germany, German nationals who are subject to the jurisdiction of the Federal Republic shall not assert against countries which have signed or acceded to the United Nations Declaration of 1 January 1942, or have been at war with Germany, or are specified in Article 5 of Chapter Five of the present Convention, or against the nationals of such countries, claims of any description arising out of actions taken or authorized by the Governments of these countries between 1 September 1939 and 5 June 1945 because of the existence of a state of war in Europe, nor shall such claims be asserted in any court of the Federal Republic by any person.

(f) à accorder aux autorités des Trois Puissances et des autres nations alliées intéressées les mêmes facilités que celles dont elles jouissent actuellement, pour l'exhumation et le transfert des corps des victimes de la guerre.

### Article 2

La République Fédérale veillera à l'entretien et à la conservation des tombes des soldats alliés sur le territoire fédéral, à moins qu'il n'y soit autrement pourvu par les nations intéressées ou par les organisations de ces nations consacrées à ces tâches, et facilitera les travaux de ces organisations. Chacune des Trois Puissances veillera à l'entretien et à la conservation des tombes des soldats allemands sur son territoire métropolitain, et facilitera l'activité des organisations consacrées à ces tâches.

### Article 3

— supprimé —

### Article 4

Les Trois Puissances se déclarent prêtes à mener, en cas de besoin, des négociations avec les Gouvernements des pays dans lesquels la République Fédérale ne possède pas de représentation diplomatique, pour le transfert de réfugiés vers le territoire fédéral.

## CHAPITRE HUITIEME

### Réclamations à l'encontre de l'Allemagne

— supprimé —
(y compris l'Annexe)

## CHAPITRE NEUVIEME

### Réclamations à l'encontre des Nations Etrangères ou des Ressortissants Etrangers

### Article 1

Sans préjudice des dispositions d'un règlement de paix avec l'Allemagne, aucune réclamation d'aucune sorte résultant d'actes accomplis ou autorisés, entre le 1er septembre 1939 et le 5 juin 1945 en raison de l'existence de l'état de guerre en Europe, par les Gouvernements des nations qui ont signé la Déclaration des Nations-Unies du 1er janvier 1942 ou y ont adhéré ou qui ont été en guerre avec l'Allemagne ou qui sont énumérées à l'Article 5 du Chapitre Cinquième de la présente Convention, ne pourra être présentée à l'encontre de ces nations ou de leurs ressortissants, par un ressortissant allemand soumis à la juridiction de la République Fédérale, ni par aucune personne devant aucun tribunal de la République Fédérale.

### Article 2

Without prejudice to the terms of a peace settlement with Germany, the Federal Republic confirms that no governmental claims on behalf of Germany arising out of actions taken or authorized by the Governments of the countries referred to in Article 1 of this Chapter between 1 September 1939 and 5 June 1945 because of the existence of a state of war in Europe may be asserted prior to the negotiation of the peace settlement.

### Article 2

Sans préjudice des dispositions d'un règlement de paix avec l'Allemagne, la République Fédérale confirme qu'aucune réclamation gouvernementale au nom de l'Allemagne, résultant d'actes accomplis ou autorisés par les Gouvernements des nations visées à l'Article 1 du présent Chapitre entre le 1er septembre 1939 et le 5 juin 1945, en raison de l'existence de l'état de guerre en Europe, ne peut être présentée avant la négociation du règlement de paix.

### Article 3

1. The provisions of this Article are applicable during the period until the entry into force of a peace settlement with Germany.

2. The Federal Republic recognizes that no claims of any kind arising out of acts or omissions of the Three Powers or any one of them, or of organizations or persons who have acted on their behalf or under their authority, which took place in respect of Germany, German nationals or German property, or in Germany, between 5 June 1945 and the entry into force of the present Convention, may be asserted by the Federal Republic or by persons subject to its jurisdiction against the Three Powers or any one of them or against organizations or persons who have acted on their behalf or under their authority.

3. The Federal Republic assumes responsibility for the decision and satisfaction of claims for compensation for occupation damages which were sustained between 1 August 1945 and the entry into force of the present Convention and for which compensation is payable under the provisions of Allied High Commission Law No. 47 as amended by Allied High Commission Law No. 79. The Federal Republic will determine which of the other claims referred to in paragraph 2 of this Article, insofar as they arose in the Federal territory, should appropriately be satisfied and will take such measures as are necessary for the determination and satisfaction of such claims.

4. The provisions of this Article shall not apply to claims arising under contracts providing for payments from national funds of any of the Three Powers.

5. The Federal Government shall carry out all decisions taken with regard to claims specified in paragraph 3 of this Article by the authorities of the Three Powers or any one of them before the entry into force of the present Convention unless such decisions have already been carried out.

### Article 3

1. — Les dispositions du présent Article sont applicables au cours de la période s'étendant jusqu'à l'entrée en vigueur d'un règlement de paix avec l'Allemagne.

2. — La République Fédérale reconnaît qu'aucune réclamation d'aucune sorte résultant d'actes ou d'omissions des Trois Puissances ou de l'une d'entre elles, ou d'organismes ou de personnes ayant agi en leur nom, ou sous leur autorité, intervenus en Allemagne ou en relation avec l'Allemagne, les ressortissants ou les biens allemands entre le 5 juin 1945 et la date d'entrée en vigueur de la présente Convention, ne pourra être présentée par la République Fédérale ni par toute personne soumise à sa juridiction à l'encontre des Trois Puissances ou de l'une d'entre elles ou à l'encontre des organismes ou des personnes ayant agi en leur nom ou sous leur autorité.

3. — La République Fédérale assume la responsabilité des décisions relatives aux demandes d'indemnisation pour les dommages d'occupation qui ont été subis entre le 1er août 1945 et la date d'entrée en vigueur de la présente Convention et qui, en vertu de la Loi Nº 47 de la Haute Commission Alliée, modifiée par la Loi Nº 79 de la Haute Commission Alliée, sont susceptibles d'indemnisation, et elle assume la responsabilité du règlement de ces demandes. La République Fédérale détermine celles des autres réclamations visées au paragraphe 2 du présent Article, et ayant pris naissance sur le territoire fédéral, qu'il serait approprié de régler et prend toutes les mesures nécessaires afin de prévoir le principe de la décision et de la réglementation de ces réclamations.

4. — Les dispositions du présent Article ne s'appliquent pas aux réclamations nées à l'occasion de contrats prévoyant des paiements à prélever sur les fonds nationaux de l'une des Trois Puissances.

5. — Le Gouvernement Fédéral exécutera, dans la mesure où elles n'ont pas encore été exécutées, toutes les décisions concernant les réclamations visées au paragraphe 3 du présent Article, prises par les Trois Puissances ou l'une d'entre elles avant l'entrée en vigueur de la présente Convention.

### Article 4

1. Pursuant to the terms of the agreement embodied in the exchange of letters between the Chairman of the Allied High Commission and the Federal Chancellor of the Federal Republic of Germany of 19 and 21 May 1952, assets of the Joint Export-Import Agency have been or will be transferred to the Federal Republic, and the Federal Republic has undertaken certain obligations.

2. The Federal Republic confirms its undertaking in accordance with such exchange of letters to indemnify the Three Powers and each of them with respect to all liabilities, either now existing or hereafter arising, in connection with the operations of the Joint Export-Import Agency or any agency whose functions were taken over by it or in connection with other foreign trade or foreign exchange operations conducted by the Three Powers or any of them and referred to in the exchange of letters.

3. The provisions of the exchange of letters referred to in paragraph 1 of this Article shall be subject, in the event of a dispute arising after the date of the exchange, to the jurisdiction of the Arbitration Tribunal in the same manner as the present Convention.

## CHAPTER TEN

## Foreign Interests in Germany

### Article 1

1. Insofar as this has not already been done, the Federal Republic will take all steps necessary to ensure that the nations persons and companies referred to in paragraph 3 of this Article shall be able to secure the return of their property in its present condition, and the restoration of their rights and interests, in the Federal territory to the extent to which such property, rights or interests suffered discriminatory treatment. The property, rights and interests of the nations, persons and companies referred to in paragraph 3 shall be freed by the Federal Republic from all encumbrances and charges of any kind to which they may have become subject as a result of discriminatory treatment. No costs shall be imposed either in connection with the return or restoration or with the removal of encumbrances or charges. Equitable conditions may, however, be imposed to prevent the unjust enrichment of any nation, person or company referred to in paragraph 3.

### Article 4

1. — Aux termes de l'accord figurant dans l'échange de lettres entre le Président de la Haute Commission Alliée et le Chancelier de la République Fédérale, en date des 19 et 21 mai 1952, les fonds de l'Agence Commune d'Exportation et d'Importation ont été ou seront transférés à la République Fédérale, et la République Fédérale s'est engagée à assumer certaines obligations.

2. — La République Fédérale confirme son engagement, conformément à cet échange de lettres, de garantir les Trois Puissances et chacune d'entre elles contre toutes revendications actuelles et futures, relatives aux opérations de l'Agence Commune d'Exportation et d'Importation ou de tout autre organisme dont les fonctions ont été assumées par ladite agence, ou relatives à d'autres opérations en matière de commerce extérieur ou en matière de changes menées par les Trois Puissances ou l'une d'entre elles et visées dans ledit échange de lettres.

3. — Les dispositions de l'échange de lettres visé au paragraphe 1 du présent Article seront soumises, dans le cas d'un litige survenu après la date de cet échange de lettres, à la compétence du Tribunal d'Arbitrage selon les mêmes modalités que la présente Convention.

## CHAPITRE DIXIEME

## Intérêts Etrangers en Allemagne

### Article 1

1. — Pour autant que cela n'ait pas encore été fait, la République Fédérale prenda toutes les dispositions nécessaires pour mettre les nations personnes et sociétés visées au paragraphe 3 du présent Article en mesure d'obtenir la restitution de leurs biens dans leur état actuel et la restauration de leurs droits et intérêts sur le territoire fédéral dans la mesure où ces biens, droits et intérêts ont subi un traitement discriminatoire. Les biens, droits et intérêts des nations, personnes et sociétés visées au paragraphe 3 seront libérés par la République Fédérale de toutes charges ou servitudes quelconques auxquelles ils auraient pu être soumis par suite d'un traitement discriminatoire. Aucun droit ne sera prélevé soit à l'occasion de leur restitution ou de leur restauration, soit à l'occasion de la levée de ces charges ou servitudes. Toutefois, des conditions équitables pourront être imposées pour éviter un enrichissement injuste de l'une des nations, personnes ou sociétés visées au paragraphe 3.

2. On the entry into force of the present Convention, the Federal Republic shall establish, and give adequate publicity to, the procedure described in the Annex to this Chapter for the filing and consideration of claims based on the provisions of this Article and for the satisfaction of awards based on such claims. Such claims shall be filed within twelve months from the establishment of such procedure. The Federal Republic shall also make available, so far as possible, all information concerning the administration by custodians of property, rights or interests to any interested party who may request it.

3. The following shall be entitled to claim under the provisions of this Article:

(a) United Nations and their nationals,

(b) the successors of such nationals, and

(c) companies organized under German law in which United Nations nationals own participation,

provided that such nationals or, except in the case of direct successors by inheritance or testamentary disposition, their successors were United Nations nationals at the date of the discriminatory treatment.

4. The term "discriminatory treatment" as used in this Article shall mean action of all kinds applied between 1 September 1939 and 8 May 1945 to any property, rights or interests, as a result of any exceptional measures which were not applicable generally to all non-German property, rights or interests, and giving rise to prejudice, deprivation or impairment without the free consent of the interested parties and without adequate compensation. Anything done or omitted under the German Ordinance on the Treatment of Enemy Properties of 15 January 1940 or any amendment thereto, or any other regulations having a similar purpose, may be held to amount to discriminatory treatment, even though within the scope of such Ordinance, amendments or regulations, where it appears that

(a) injury to foreign property, rights or interests resulted therefrom; and

(b) the injury inflicted could have been avoided without infringing such Ordinance, amendments or regulations.

2. — Lors de l'entrée en vigueur de la présente Convention, la République Fédérale instituera la procédure prévue dans l'Annexe au présent Chapitre pour le dépôt et l'examen des demandes fondées sur les dispositions du présent Article et pour l'exécution des décisions qui seront rendues à leur égard. Elle donnera à cette procédure toute la publicité appropriée. Ces demandes devront être présentées dans les douze mois de l'institution de cette procédure. La République Fédérale devra également, dans toute la mesure du possible, porter à la connaissance de toute partie intéressée qui en fera la demande tous renseignements concernant la gestion, par des administrateurs séquestres, de ces biens, droits et intérêts.

3. — Les entités et personnes suivantes auront qualité pour présenter des réclamations en application des dispositions du présent Article :

(a) les Nations-Unies et leurs ressortissants;

(b) les successeurs de ces ressortissants; et

(c) les sociétés constituées selon le droit allemand dans lesquelles des ressortissants des Nations-Unies possèdent des participations;

sous réserve que ces ressortissants ou leurs successeurs, sauf dans le cas des successeurs en ligne directe par voie d'héritage ou de dispositions testamentaires, aient été ressortissants des Nations-Unies à le date du traitement discriminatoire.

4. — L'expression «traitement discriminatoire», au sens du présent Article, désigne les mesures de toute nature appliquées entre le 1er septembre 1939 et le 8 mai 1945 à tous biens, droits et intérêts par suite de tout traitement exceptionnel qui n'était pas généralement applicable à tous les biens, droits et intérêts non-allemands, et qui ont eu pour effet d'occasionner des préjudices, pertes ou dommages quelconques sans le libre consentement des parties intéressées et sans indemnisation appropriée. Tout acte ou omission intervenu en application de l'Ordonnance allemande sur le Traitement des Biens Ennemis, en date du 15 janvier 1940, de tous amendements à cette Ordonnance ou de toutes autres réglementations ayant des buts analogues, pourra être considéré comme constituant un traitement discriminatoire, même s'il entrait dans le cadre de cette Ordonnance, de ces amendements ou de ces réglementations, lorsqu'il apparaîtra :

(a) qu'il en est résulté un dommage à un bien étranger ou à des droits ou intérêts étrangers ; et

(b) que le dommage causé aurait pu être évité sans violer cette Ordonnance, ces amendements ou ces réglementations.

5. The provisions of this Article are not applicable to claims which are dealt with under Chapters Three and Four of the present Convention.

6. The provisions of this Article are not intended to cover compensation for loss or damage to property, rights or interests due to discriminatory treatment or resulting indirectly or directly from the war by any other means, but shall not affect the right of any of the United Nations to advance during negotiation for a peace settlement any claim for compensation of this nature with respect to its own or its nationals' property, rights or interests.

### Article 2

Insofar as they affect foreign creditors of German debtors, the Federal laws on periods of limitation (including preclusion and prescription) of 28 December 1950 and 30 March 1951 (Gesetz über den Ablauf der durch Kriegs- oder Nachkriegsvorschriften gehemmten Fristen und Gesetz zur Ergänzung des Gesetzes über den Ablauf der durch Kriegs- oder Nachkriegsvorschriften gehemmten Fristen, Bundesgesetzblatt 1950 Seite 821 und 1951 Teil I Seite 213) together with Allied High Commission Law No. 67 on the same subject, shall be maintained in force. This legislation shall be reviewed by the Federal Republic in agreement with the other Signatory States on the basis of the provisions of the Agreement on German External Debts, concluded in London on 27 February 1953, in so far as this legislation involves claims dealt with in that Agreement.

### Article 3

Without prejudice to the terms of the final peace settlement with Germany, the United Nations and their nationals shall enjoy, on the same basis as German nationals residing in the Federal territory, such compensation for war damage relating to property located in the Federal territory as may be provided by the Federal Republic or any of its Länder, but not Integration Aid (Eingliederungshilfe) or Housing Aid (Wohnraumhilfe).

### Article 4

The Federal Republic reaffirms that under German law the state of war shall not in itself be regarded as affecting obligations to pay pecuniary debts arising out of obligations and contracts which existed, and rights which were aquired, before the commencement of the state of war.

5. — Les dispositions du présent Article ne sont pas applicables aux demandes traitées aux Chapitres Troisième et Quatrième de la présente Convention.

6. — Les dispositions du présent Article n'ont pas pour objet de régler la question de l'indemnisation pour pertes ou dommages causés aux biens, droits ou intérêts et dus à un traitement discriminatoire ou résultant indirectement ou directement de la guerre de toute autre manière, mais elles n'affectent pas le droit de l'une quelconque des Nations-Unies de présenter, au cours de la négociation du règlement de paix, des demandes d'indemnisation de cette nature en ce qui concerne ses propres biens, droits ou intérêts ou ceux de ses ressortissants.

### Article 2

Dans la mesure où elles affectent les créanciers étrangers de débiteurs allemands, les lois fédérales relatives aux délais de prescription et de forclusion (Gesetz über den Ablauf der durch Kriegs- oder Nachkriegsvorschriften gehemmten Fristen und Gesetz zur Ergänzung des Gesetzes über den Ablauf der durch Kriegs- oder Nachkriegsvorschriften gehemmten Fristen, Bundesgesetzblatt 1950, Seite 821 und 1951 Teil I Seite 213), en date du 28 décembre 1950 et du 30 mars 1951, ainsi que la Loi N° 67 de la Haute Commission Alliée relative au même objet, seront maintenues en vigueur. Cette législation sera sujette à révision par la République Fédérale en accord avec les autres Etats Signataires sur la base des dispositions de l'Accord sur les Dettes Extérieures Allemandes conclu à Londres le 27 février 1953 dans la mesure où cette législation se rapporte à des créances traitées dans cet Accord.

### Article 3

Sans préjudice des dispositions du règlement final de paix avec l'Allemagne, les Nations-Unies et leurs ressortissants participeront, sur la même base que les ressortissants allemands résidant sur le territoire fédéral, à toute indemnisation pour dommages de guerre, concernant les biens situés sur le territoire fédéral, qui pourra être prévue par la République Fédérale ou l'un de ses Länder, dans la mesure où il ne s'agira pas de l'Aide au Reclassement (Eingliederungshilfe) ou de l'Aide au Logement (Wohnraumhilfe).

### Article 4

La République Fédérale réaffirme que, en vertu du droit allemand, l'état de guerre ne devra pas, en soi, être considéré comme affectant les obligations de payer les dettes en espèces nées d'obligations et de contrats qui existaient ou de droits qui étaient acquis avant le commencement de l'état de guerre.

### Article 5

Any United Nations national, or the successor of such a national who is also a United Nations national, shall have the right to institute, within one year from the entry into force of the present Convention, an action for the revision of any judgment delivered by a German Court between 1 September 1939 and 8 May 1945 in any proceeding in which such national was a party and was physically, morally or legally unable to make adequate presentation of his case.

### Article 6

1. Pending a final settlement of claims against Germany arising out of the war, the persons defined in paragraph 2 of this Article, and their property, shall be exempt from any exceptional taxes, levies or imposts, the incidence of which is in fact on property, imposed for the specific purpose of meeting charges arising out of the war or out of reparation or restitution to any of the United Nations.

2. Where any such tax, levy or impost is levied only partly for the purposes described in paragraph 1 of this Article, the exemption to be granted shall in principle be proportionate to the part of such taxes, levies or imposts imposed for these purposes. In the particular cases of the levies prescribed by the legislation of the Bizonal Economic Council and by the corresponding legislation of the Länder of Rhineland - Palatinate, Baden and Württemberg-Hohenzollern, concerning Immediate Aid (Soforthilfe) and by the Law on Equalisation of Burdens of 14 August 1952 (Bundesgesetzblatt I Seite 446), the persons and property described in the following provisions of this Article shall be exempted, to the extent provided, from payments falling due in the six-year period from 1 April 1949 to 31 March 1955 as Immediate Aid levies, and as the property levy under the Equalization of Burdens:

(a) natural persons who were nationals of any of the United Nations on the currency reform date (21 June 1948), and companies, associations of persons and trusts (Körperschaften Personenvereinigungen und Vermögensmassen), which are independently liable for taxation under German law, organized under the laws of one of the United Nations, shall, if subject to unlimited tax liability, be exempted in respect of all property owned by them both on 21 June 1948 and on 8 May 1945 or, if subject to limited tax liability, in respect of all property owned by them in the Federal Republic or Berlin (West). Citizens of any territorial entity or nation referred to in sub-paragraph (c) of Article 1 of Allied

### Article 5

Tout ressortissant des Nations-Unies, ou tout successeur de ce ressortissant qui possède également la qualité de ressortissant des Nations-Unies, aura le droit d'introduire, dans un délai d'un an à compter de l'entrée en vigueur de la présente Convention, une demande en révision de tout jugement prononcé par un tribunal allemand entre le 1er septembre 1939 et le 8 mai 1945, dans tout procès auquel il était partie et dans lequel il a été dans l'impossibilité physique, morale ou juridique d'exposer sa cause d'une manière satisfaisante.

### Article 6

1. — En attendant un règlement final des créances sur l'Allemagne résultant de la guerre, les personnes visées au paragraphe 2 du présent Article, ainsi que leurs biens, seront exonérés de tous impôts, taxes ou prélèvements exceptionnels dont l'incidence frappe, en fait, les biens et qui sont expressément destinés à couvrir les charges résultant de la guerre ou des réparations ou des restitutions au profit de l'une quelconque des Nations-Unies.

2. — Lorsqu'un tel impôt, taxe ou prélèvement n'est imposé que partiellement pour les fins mentionnées au paragraphe 1 du présent Article, l'exonération qui sera accordée sera, en principe, proportionnelle à la partie de ces impôts, taxes ou prélèvements affectée à ces fins. Dans le cas particulier des impositions prescrites par la législation du Conseil Economique de la Bizone et par les législations correspondantes des Länder de Rhénanie-Palatinat, de Bade et du Wurtemberg-Hohenzollern sur l'Aide Immédiate (Soforthilfe), et par la Loi sur la Péréquation des Charges en date du 14 août 1952 (Bundesgesetzbl. I, S. 446), les personnes et les biens visés dans les dispositions ci-après du présent Article seront exonérés, dans la mesure prévue, des paiements à effectuer dans la période de six ans allant du 1er avril 1949 au 31 mars 1955, au titre des impôts de l'Aide Immédiate et des impôts sur les biens prévus en vertu de la Péréquation des Charges:

(a) les personnes physiques qui étaient ressortissants de l'une quelconque des Nations-Unies à la date de la réforme monétaire (21 juin 1948), ainsi que les sociétés, associations de personnes et groupements de biens (Körperschaften, Personenvereinigungen und Vermögensmassen) qui sont indépendamment soumis à imposition en vertu du droit allemand, constitués en vertu des lois de l'une des Nations-Unies, seront, s'ils sont imposables sans limitation, exonérés en ce qui concerne tous les biens qu'ils possédaient tant le 21 juin 1948 que le 8 mai 1945, ou, s'ils sont partiellement imposables, exonérés en ce qui concerne tous les biens qu'ils possèdent sur le territoire fédéral ou à Berlin (Ouest). Les citoyens

High Commission Law No. 54 shall enjoy the same exemption if they had the nationality of any of the United Nations at any time between 1 September 1939 and 21 June 1948;

(b) companies organized under German law, which are independently liable for taxation, in which the natural persons or companies, associations of persons or trusts described in sub-paragraph (a) of this paragraph owned on 21 June 1948 and on 8 May 1945, directly or through the medium of other companies a shareholding interest of at least 85 per cent. shall be exempted in proportion to such shareholding interest;

(c) natural persons who do not qualify for exemption under sub-paragraph (a) of this paragraph and who claim or have claimed restitution or compensation pursuant to the legislation referred to in sub-paragraph (a) of paragraph 1 of Article 1 of Chapter Three of the present Convention shall be exempted on the first DM 150.000 in value or amount of property of any kind which has been or will be transferred to them under orders, decisions or recorded agreements pursuant to such legislation which would be taxable under the provisions concerning Immediate Aid levies or the property levy under the Equalization of Burdens;

(d) the exemptions prescribed in sub-paragraphs (a) to (c) inclusive of this paragraph shall not become inoperative on the ground that the property concerned has devolved upon other persons on or after 21 June 1948.

3. For the purposes of sub-paragraph (a) of paragraph 2 of this Article, property which the owner on 21 June 1948 did not own on 8 May 1945 shall be deemed to have been owned by him on 8 May 1945 if

(a) the property was owned on 8 May 1945 by a person (of any nationality), from whom he acquired it through succession on death (by one or a series of inheritances or testamentary dispositions); or

(b) he acquired the property after 8 May 1945 in exchange for other property owned by him on that date (for example, through purchase); or

(c) the property concerned is restituted property of any kind, without limitation as to the value or amount,

de toute entité territoriale ou de toute nation, visés à l'alinéa (c) de l'Article 1 de la Loi No 54 de la Haute Commission Alliée, bénéficieront de la même exonération si, à quelque époque que ce soit entre le 1er septembre 1939 et le 21 juin 1948, ils avaient la nationalité de l'une quelconque des Nations-Unies;

(b) les sociétés constituées selon le droit allemand, qui sont indépendemment soumises à imposition, et dans lesquelles les personnes physiques ou sociétés, associations de personnes ou groupements de biens visés à l'alinéa (a) du présent paragraphe possédaient, tant le 21 juin 1948 que le 8 mai 1945, directement ou par l'intermédiaire d'autres sociétés, une participation de 85% au moins dans le capital-actions, seront exonérées proportionnellement à cette participation;

(c) les personnes physiques qui ne sont pas qualifiées pour être exonérées aux termes de l'alinéa (a) du présent paragraphe, et qui réclament ou ont réclamé une restitution ou une indemnisation en vertu de la législation visée à l'alinéa (a) du paragraphe 1 de l'Article 1 du Chapitre Troisième de la présente Convention, seront exonérées, pour la première fraction de 150.000 DM., en valeur ou en espèces, des biens de toutes sortes qui leur ont été ou qui leur seront transférés en exécution d'ordres, d'arrêtés, de décisions ou d'accords enregistrés en vertu de cette législation, et qui seraient sujets à imposition aux termes des dispositions relatives aux impôts au titre de l'Aide Immédiate et aux impôts sur les biens, prévus en vertu de la Péréquation des Charges;

(d) les exonérations prévues aux alinéas (a) à (c) inclus du présent paragraphe ne deviendront pas caduques du fait que le bien en cause aura été dévolu à d'autres personnes le 21 juin 1948 ou après cette date.

3. — Pour l'application de l'alinéa (a) du paragraphe 2 du présent Article, tout bien que le détenteur possédait le 21 juin 1948, mais non le 8 mai 1945, sera considéré comme ayant été en sa possession le 8 mai 1945:

(a) si ce bien était possédé le 8 mai 1945 par une personne (quelle que soit sa nationalité) de laquelle il l'a acquis par voie de succession à la suite d'un décès (au moyen d'un ou plusieurs héritages ou dispositions testamentaires); ou

(b) si le détenteur a acquis ce bien après le 8 mai 1945 par voie d'échange contre d'autres biens qu'il possédait à cette date (par exemple par voie d'achat); ou

(c) si le bien en cause est un bien restitué, de quelque nature qu'il soit, sans limitation quant à sa-referred to in sub-paragraph (c) of paragraph 2 of this Article.

4. For the purposes of sub-paragraph (b) of paragraph 2 of this Article, the provisions of paragraph 3 of this Article shall be applicable *mutatis mutandis*

5. Where payments made under the provisions of the Immediate Aid by natural persons, companies, associations of persons and trusts entitled to exemption under paragraph 2 of this Article exceed amounts of the property levy falling due for the same period taking into account the provisions of paragraph 2, the overpayment shall, not later than three months after the effective date of the notice of assessment issued by the German tax office concerning the property levy, be either refunded or set off against liabilities due for payment or which become due within three months thereafter.

6. In cases in which natural persons, companies, associations of persons or trusts enjoy exemption from the property levy by virtue of this Article, the annual amount to be paid in respect of the property levy for the period after the expiration of the exemption period shall not, either because of this exemption or because of the non-payment of the property levy or the Immediate Aid levy, be higher than the annual amount which would be payable by non-exempted natural persons, companies, associations of persons or trusts who have paid the Immediate Aid levy in full. If in computing the property levy the Immediate Aid levy is to be set off in the manner proposed in the draft law submitted to the Bundestag (Bundestag Document No. 3300), that is, by deduction of the Immediate Aid levy from the total liability for the property levy, then in cases where the Immediate Aid levy has not been imposed, three times the basic annual payment under the property levy is to be deducted from the total liability; the basic annual payment shall for this purpose be the amount resulting from the application of the annual contribution rates to the total liability.

7. In computing the liability for the purposes of any other levy under the Equalization of Burdens Law, natural persons, companies, associations of persons and trusts enjoying the exemptions under this Article shall be treated as though they had paid the full amount of the property levy.

8. In cases under sub-paragraph (b) of paragraph 2 of this Article both the company, and any shareholder

valeur ou à son montant, visé à l'alinéa (c) du paragraphe 2 du présent Article.

4. — Pour l'application de l'alinéa (b) du paragraphe 2 du présent Article, les dispositions du paragraphe 3 s'appliquent *mutatis mutandis*.

5. — Lorsque des paiements, effectués en vertu des dispositions de la législation sur l'Aide Immédiate par des personnes physiques, des sociétés, des associations de personnes ou des groupements de biens en droit de bénéficier d'une exonération en application du paragraphe 2 du présent Article, dépassent le montant de l'impôt sur les biens dû pour la même période, compte tenu des dispositions du paragraphe 2, les sommes versées en excédent seront, au plus tard trois mois après la date d'échéance de l'avertissement émis par le bureau fiscal allemand au titre de l'impôt sur les biens, soit remboursées, soit déduites des sommes à régler ou de celles qui seront à régler dans les trois mois suivants.

6. — Dans les cas où des personnes physiques, des sociétés, des associations de personnes ou des groupements de biens bénéficient d'exemptions d'impôts sur les biens en vertu du présent Article, le montant annuel à acquitter au titre de l'impôt sur les biens pour la période suivant la date d'expiration de la période d'exemption ne peut être, soit en raison de cette exemption, soit en raison du non-paiement de l'impôt sur les biens ou de la taxe d'Aide Immédiate, plus élevé que le montant annuel qui serait payable par des personnes physiques, des sociétés, des associations de personnes ou des groupements de biens non exemptés qui auraient payé dans sa totalité la taxe d'Aide Immédiate. Lorsque, dans le calcul de l'impôt sur les biens, la taxe d'Aide Immédiate est décomptée de la manière prévue dans le projet de loi soumis au Bundestag (Document du Bundestag N° 3300) c'est-à-dire déduite du total des sommes dues au titre de l'impôt sur les biens, le triple du versement de base annuel à ce titre doit être, dans les cas où la taxe d'Aide Immédiate n'a pas été imposée, déduit du total des sommes dues. A cet effet, la somme provenant de l'application du taux de la contribution annuelle à l'obligation fiscale totale sera considérée comme constituant le versement de base annuel.

7. — Dans le calcul des sommes dues au titre de toutes autres taxes en vertu de la Loi sur la Péréquation des Charges, les personnes physiques, les sociétés, les associations de personnes et les groupements de biens bénéficiant d'exemptions en vertu du présent Article, devront être considérés comme ayant payé la totalité de l'impôt sur les biens

8. — Dans les cas visés à l'alinéa (b) du paragraphe 2 du présent Article, la société, ainsi que tout action-

who believes the company should be exempted with respect to his participation, shall be entitled to all legal remedies available.

### Article 7

In order to protect the interests of Foreign nationals, the following legislation shall be maintained in force:

(a) in the field of Monetary Reform legislation:

- (i) Deleted.
- (ii) Allied High Commission Laws No. 57 (Status of Certain Financial Institutions under Currency Reform Legislation) and No. 65 (Third Amendment of Legislation Concerning Monetary Reform) which supplement, amend and interpret the Conversion Laws;

(b) Deleted.

(c) in other fields:

- (i) Deleted.
- (ii) Deleted.
- (iii) Allied High Commission Law No. 34 on Application of Land Reform to the Property of Non-German Nationals, as amended by Allied High Commission Laws Nos 50, 60, 64 and 72; these laws shall, however, be deemed to be further amended as follows:
  - (1) the period of one year commencing on the date of acquisition provided for in paragraph 2 of Article 2 of Law No. 34 shall, in respect of an acquisition by inheritance or testamentary disposition, apply only to an acquisition which has taken place prior to 31 December 1952;
  - (2) an owner of land, whose possession of non-German nationality was in dispute and who for this reason was not in a position to dispose of his land prior to 29 February 1952 pursuant to paragraph 1 of Article 2 of Allied High Commission Law No. 34, may within a period of one year commencing on the date on which it was or will be established that he did not possess German nationality, dispose of his land;
  - (3) owners of land who were of German as well as of non-German nationality shall within the meaning of these laws, be deemed to be non-German nationals, if at any time

naire qui estime que la société devrait être exonérée en considération de sa participation, seront en droit d'utiliser tous les recours légaux qui leur seront ouverts.

### Article 7

Afin de protéger les intérêts des ressortissants étrangers, la législation ci-après sera maintenue en vigueur:

(a) dans le domaine de la législation sur la réforme monétaire :

- (i) supprimé ;
- (ii) les Lois de la Haute Commission Alliée Nº 57 (statut de certains établissements financiers aux termes de la législation sur la réforme monétaire) et Nº 65 (portant troisième amendement à la législation sur la réforme monétaire) qui complètent, amendent et interprètent les Lois de Conversion;

(b) supprimé ;

(c) dans d'autres domaines :

- (i) supprimé ;
- (ii) supprimé ;
- (iii) la Loi Nº 34 de la Haute Commission Alliée, portant application de la législation sur la réforme agraire aux biens des ressortissants non allemands, amendée par les Lois Nº 50, 60, 64 et 72 de la Haute Commission Alliée ; ces lois seront, toutefois, considérées comme étant à leur tour amendées comme suit:
  - (1) le délai d'un an à compter de la date de l'acquisition, prévu au paragraphe 2 de l'Article 2 de la Loi Nº 34 de la Haute Commission Alliée, ne s'applique, en ce qui concerne une acquisition par héritage ou par disposition testamentaire, qu'à une acquisition ayant eu lieu avant le 31 décembre 1952;
  - (2) un propriétaire terrien dont l'appartenance à une nationalité non allemande a été contestée et qui, pour ce motif, n'a pas été en mesure de disposer de sa terre avant le 29 février 1952 en vertu du paragraphe 1 de l'Article 2 de la Loi Nº 34 de la Haute Commission Alliée, peut en disposer dans un délai d'un an à compter de la date à laquelle il a été ou sera établi qu'il n'était pas de nationalité allemande ;
  - (3) les propriétaires terriens, qui possédaient à la fois la nationalité allemande et une nationalité non allemande, seront, au sens de ces lois, considérés comme ressortissants

between 1 September 1939 and 8 May 1945 their property was subject to any of the provisions of the German Ordinance on the Treatment of Enemy Properties of 15 January 1940 or any amendment thereto, or any other regulations having a similar purpose. In such case disposition of the land shall be permissible until 31 December 1952.

### Article 8

1. Allied High Commission Law No. 8 on Industrial, Literary and Artistic Property Rights of Foreign Nations and Nationals, as amended by Allied High Commission Laws Nos. 30, 39, 41 and 66, together with the First and Second Implementing Ordinances under Allied High Commission Law No. 8 of 8 May 1950 and 9 November 1950 (Bundesgesetzblatt Seite 357 und Seite 785), shall be maintained in force.

2. However, the provisions of Allied High Commission Law No. 8, as amended, governing the settlement of disputes arising out of the application of that Law, shall be deemed to be amended as follows:

(a) an appeal may be taken to the Arbitral Commission on Property, Rights and Interests in Germany referred to in Article 12 of this Chapter from any decision of last instance of the Patent Office or of its Grand Senate or from any decision in the first instance of the regular courts, in accordance with the provisions of Article 12 of this Chapter and the Charter of the Arbitral Commission.

(b) the powers of the Occupation Authorities under the last sentence of Article 2 and paragraph 3 of Article 7 of Law No. 8 shall lapse.

### Article 9

1. For the purposes of this Chapter, the term "United Nations" shall have the same meaning as in Allied High Commission Law No. 54, which is maintained in force for those purposes.

2. For the purposes of this Chapter, the term United Nations nationals" shall, except as otherwise herein provided, mean:

(a) natural persons who are nationals of any of the United Nations. Natural persons who have the nationality of one of the United Nations and also German nationality shall be

non allemands, si, à une époque quelconque entre le 1er septembre 1939 et le 8 mai 1945, leurs biens ont été soumis à l'une quelconque des dispositions de l'Ordonnance allemande sur le Traitement des Biens Ennemis, en date du 15 janvier 1940, de tous amendements à cette Ordonnance, ou de tout autre réglementation ayant des buts analogues. Dans ce cas, la cession de la terre sera autorisée jusqu'au 31 décembre 1952.

### Article 8

1. — La Loi N° 8 de la Haute Commission Alliée, relative aux droits de propriété industrielle, littéraire et artistique des Nations Etrangères et de leurs ressortissants, amendée par les Lois N°s 30, 39, 41 et 66 de la Haute Commission Alliée, ainsi que la première et la seconde Ordonnance en date du 8 mai 1950 et du 9 novembre 1950 portant application de la Loi N° 8 de la Haute Commission Alliée (Bundesgesetzblatt, Seite 357 und Seite 785) seront maintenues en vigueur.

2. — Toutefois, les dispositions de la Loi N° 8, amendée, de la Haute Commission Alliée, qui régissent le règlement des différends naissant de l'application de cette Loi, seront considérées comme amendées ainsi qu'il suit :

(a) toute décision prononcée en dernière instance par l'Office des Brevets ou par son Grand Sénat, ou toute décision prononcée en première instance par les tribunaux de droit commun pourra faire l'objet d'un appel devant la Commission Arbitrale sur les Biens, Droits et Intérêts en Allemagne visée à l'Article 12 du présent Chapitre, conformément aux dispositions de ce même Article et de la Charte de la Commission Arbitrale ;

(b) les pouvoirs des Autorités d'Occupation aux termes de la dernière phrase de l'Article 2 et du paragraphe 3 de l'Article 7 de la Loi N° 8 cesseront d'exister.

### Article 9

1. — Au sens du présent Chapitre, l'expression «Nations Unies» a la même signification que dans la Loi N° 54 de la Haute Commission Alliée, qui est maintenue en vigueur à cet effet.

2. — Au sens du présent Chapitre, l'expression «ressortissants des Nations Unies» désigne, sauf dispositions contraires :

(a) les personnes physiques qui sont ressortissants de l'une des Nations-Unies. Les personnes physiques possédant la nationalité de l'une des Nations-Unies et en même

deemed to be exclusively nationals of the United Nations if, at any time between 1 September 1939 and 8 May 1945, their property in Germany was subject to any of the provisions of the German Ordinance on the Treatment of Enemy Properties of 15 January 1940 or any amendment thereto, or any other regulations having a similar purpose, unless it was exempted therefrom by specific permission of the Reich Minister of Justice;

(b) juristic persons or associations of persons established under the laws of one of the United Nations.

### Article 10

If the Federal Republic concludes with any other Power, on matters within the scope of Articles 1 to 9 inclusive of this Chapter, arrangements more favourable to such other Power than the corresponding provisions of those Articles, the benefits of such new arrangements shall automatically be extended to all Powers benefiting from the corresponding provisions of those Articles.

### Article 11

In the expectation that such a policy will be applied by such Nations toward the Federal Republic, the Federal Republic declares its intention to pursue a general policy of non-discrimination toward the United Nations and their nationals and toward the property, rights and interests of such Nations and nationals, and in general to accord national and most-favoured nation treatment in matters affecting such Nations and nationals and their property, rights and interests in the field of establishment and navigation. The Federal Republic further declares its readiness to enter into treaties with the United Nations based on these principles.

### Article 12

1. The following decisions may be appealed to the Arbitral Commission on Property, Rights and Interests in Germany, referred to in Article 7 of Chapter Five of the present Convention, in accordance with the provisions of its Charter, upon application to the Commission by the party concerned within thirty days after the service thereof:

(a) decisions under Article 1 of this Chapter of the Federal Higher Authority referred to in the Annex thereto;

temps la nationalité allemande, seront considérées comme étant uniquement ressortissantes des Nations-Unies si, à un moment quelconque entre le 1er septembre 1939 et le 8 mai 1945, leurs biens en Allemagne ont été soumis à l'une des dispositions de l'Ordonnance allemande sur le Traitement des Biens Ennemis, en date du 15 janvier 1940, de tous amendements à cette Ordonnance ou de toute autre réglementation ayant des buts analogues, à moins qu'elles n'en aient été exemptées par autorisation expresse du Ministre de la Justice du Reich.

(b) les personnes morales ou associations de personnes constituées selon le droit de l'une des Nations-Unies.

### Article 10

Si la République Fédérale conclut avec toute autre Puissance, en des matières couvertes par les Articles 1 à 9 inclus du présent Chapitre, des arrangements plus favorables pour cette Puissance que les dispositions correspondantes de ces Articles, le bénéfice de ces nouveaux arrangements sera étendu automatiquement à toutes les Puissances bénéficiant des dispositions correspondantes desdits Articles.

### Article 11

Dans l'attente qu'une telle politique sera appliquée par ces nations à l'égard de la République Fédérale, celle-ci déclare son intention de poursuivre une politique générale de non-discrimination à l'égard des Nations-Unies et de leurs ressortissants, ainsi qu'à l'égard des biens, droits et intérêts des Nations-Unies et de leurs ressortissants, et d'accorder en général le traitement national et le traitement de la nation la plus favorisée dans les questions affectant ces nations, leurs ressortissants et leurs biens, droits et intérêts, dans le domaine de l'établissement et de la navigation. La République Fédérale se déclare, en outre, prête à conclure avec les Nations-Unies des traités fondés sur ces principes.

### Article 12

1. — Les décisions suivantes sont susceptibles d'appel devant la Commission Arbitrale sur les Biens, Droits et Intérêts en Allemagne, visée à l'Article 7 du Chapitre Cinquième de la présente Convention, conformément aux dispositions de la Charte de cette Commission, sur demande adressée à la Commission par la partie intéressée dans les trente jours de la notification de la décision :

(a) les décisions prises conformément à l'Article 1 du présent Chapitre par l'Autorité Fédérale Supérieure visée à l'Annexe au présent Chapitre ;

(b) decisions of an administrative court of first instance in regard to discriminatory treatment under Article 3;

(c) decisions of German courts of first instance (regular courts, administrative courts, finance courts or other courts) relating to the application of Articles 2, 4 and 5;

(d) decisions of the finance courts of first instance under Article 6;

(e) decisions of the regular courts of first instance in contentious or non-contentious matters under Article 7;

(f) decisions of the last instance of the German Patent Office or its Grand Senate under Allied High Commission Law No. 8 or decisions of the regular courts of first instance under that Law pursuant to Article 8.

Appeals under the last sentence of Article 2 and paragraph 3 of Article 7 of Allied High Commission Law No. 8, pending on the entry into force of the present Convention before the Patent Appeal Board established by Regulation No. 1 under Law No. 8 (amended), are hereby transferred to the Arbitral Commission and shall be dealt with by it in the same manner as appeals under this Article.

Appeal to the Arbitral Commission pursuant to sub-pragraphs (b) to (f) inclusive of this paragraph shall not bar the continuance of proceedings before the German courts and authorities on other issues in dispute. If, however, the Commission deems it necessary in order to protect the interests of a party to the proceeding it may order the stay of further proceedings before the German courts or authorities pending the Commission's decision on the question referred to it.

2. If the party affected by a decision referred to in sub-paragraphs (b) to (f) inclusive of paragraph 1 of this Article appeals from the decision to a German court instead of appealing to the Arbitral Commission, such party may not appeal thereafter to the Arbitral Commission against the decision of the German court of higher instance on points on which he could have appealed to the Arbitral Commission. If, in a decision referred to in sub-paragraphs (b) to (f) inclusive of paragraph 1, the requirements for an appeal to the Arbitral Commission did not exist, but if a German court of higher instance renders a decision which in the opinion of the party concerned violates the Articles of this Chapter

(b) les décisions d'un tribunal administratif de première instance en matière de traitement discriminatoire conformément à l'Article 3;

(c) les décisions des tribunaux allemands de première instance (juridiction de droit commun, juridictions administratives, tribunaux des finances ou autres tribunaux) relatives à l'application des Articles 2, 4 et 5;

(d) les décisions des tribunaux des finances de première instance conformément à l'Article 6;

(e) les décisions des tribunaux de droit commun de première instance en matière de procédure contentieuse ou de juridiction gracieuse, conformément à l'Article 7;

(f) les décisions prononcées en dernière instance par l'Office allemand des Brevets ou par son Grand Sénat, conformément à la Loi Nº 8 de la Haute Commission Alliée, ou les décisions prononcées par des tribunaux de droit commun de première instance, conformément à cette Loi, aux termes de l'Article 8.

Les demandes d'appel en vertu de la dernière phrase de l'Article 2 et du paragraphe 3 de l'Article 7 de la Loi Nº 8 de la Haute Commission Alliée, en instance à la date d'entrée en vigueur de la présente Convention devant la Commission d'Appel en matière de Brevets, instituée par le Règlement Nº 1 pris en application de la Loi Nº 8 (amendée), sont transférées à la Commission Arbitrale et seront examinées par elle de la même manière que les demandes d'appel présentées en vertu du présent Article.

L'appel interjeté devant la Commission Arbitrale conformément aux alinéas (b) à (f) inclus du présent paragraphe n'interrompra pas le déroulement de la procédure devant les tribunaux allemands ou autorités allemandes sur les autres questions en litige. Toutefois, si la Commission le juge nécessaire pour protéger les intérêts de l'une des parties, elle peut ordonner de suspendre la procédure devant les tribunaux allemands ou les autorités allemandes jusqu'à ce qu'elle ait statué sur la question qui lui est soumise.

2. — Si la partie affectée par une décision mentionnée dans les alinéas (b) à (f) inclus du paragraphe 1 du présent Article fait appel de cette décision devant un tribunal allemand au lieu d'en appeler à la Commission Arbitrale, cette partie ne peut ultérieurement interjeter appel devant la Commission Arbitrale contre la décision de l'instance supérieure allemande sur les points qui auraient pu faire l'objet d'un appel à la Commission Arbitrale. Si la décision de l'une des instances mentionnées dans les alinéas (b) à (f) inclus du paragraphe 1 n'a pas présenté les conditions requises pour faire l'objet d'un appel devant la Commission Arbitrale, mais si une instance supérieure allemande a rendu

referred to in paragraph 1, such party may appeal from the decision of the higher German court to the Arbitral Commission.

3. The Commission shall also be authorized to render a decision in any case referred to in paragraph 1 of this Article where the appropriate German court or authority has not rendered a final decision within one year following submission to it and where the party concerned submits the matter for the decision of the Commission within thirty days after the expiration of that year.

4. In any case referred to in paragraphs 1, 2 or 3 of this Article, the Commission may render a final decision or may remand the case to the court or authority concerned, with such instructions as the Commission deems necessary or appropriate.

5. Decisions and instructions of the Commission shall be final and binding on all German courts and authorities.

## ANNEX TO CHAPTER TEN

### Section 1

1. The Federal Government shall establish a Federal Higher Authority (Bundesoberbehörde) to receive, to consider and to decide on applications for return and restoration under paragraph 2 of Article 1 of the foregoing Chapter. The Federal Government may issue regulations for carrying out the provisions of this Annex.

2. All German courts and authorities shall render the Federal Higher Authority legal and other official assistance pursuant to Article 35 of the Basic Law.

### Section 2

1. Applications for return or restoration shall be made in writing, or by oral statement to be recorded, to the Federal Higher Authority.

2. Applications shall include

(a) first name, last name and address of the claimant and of his predecessor in title when applicable;

(b) description of the discriminatory measure and of the property, rights or interests affected by it;

une décision qui, de l'avis de la partie en cause, viole les Articles du présent Chapitre mentionnés au paragraphe 1, cette partie peut faire appel de la décision de l'instance supérieure allemande devant la Commission Arbitrale.

3.— La Commission sera également autorisée à prononcer une décision dans les cas mentionnés au paragraphe 1 du présent Article lorsque le tribunal allemand ou l'autorité allemande compétent n'aura pas rendu de décision définitive un an après qu'un tel cas lui aura été soumis et lorsque la partie intéressée soumettra la question à la Commission pour décision, dans les trente jours suivant l'expiration de cette période d'une année.

4. — Dans les cas mentionnés aux paragraphes 1, 2 et 3 du présent Article, la Commission pourra prononcer une décision définitive; elle pourra aussi renvoyer l'affaire au tribunal ou à l'autorité intéressé, avec les instructions qu'elle estimera nécessaires ou appropriées.

5. — Les décisions et les instructions de la Commission seront définitives et lieront tous les tribunaux allemands et toutes les autorités allemandes.

## ANNEXE AU CHAPITRE DIXIEME

### Paragraphe 1

1. — Le Gouvernement Fédéral instituera une Autorité Fédérale Supérieure (Bundesoberbehörde) pour recevoir, examiner et trancher les demandes de restitution et de restauration, conformément au paragraphe 2 de l'Article 1 du Chapitre qui précède. Le Gouvernement Fédéral peut émettre des règlements pour l'exécution des dispositions de la présente Annexe.

2. — Tous les tribunaux allemands et autorités allemandes doivent, conformément à l'Article 35 de la Loi Fondamentale, prêter une aide judiciaire et administrative à l'Autorité Fédérale Supérieure.

### Paragraphe 2

1. — Les demandes de restitution ou de restauration doivent être présentées à l'Autorité Fédérale Supérieure, soit par écrit, soit oralement à fin de procès-verbal.

2. — Ces demandes doivent comporter:

(a) le prénom, le nom et l'adresse de l'ayant-droit et, le cas échéant, de la personne dont il tient ses droits;

(b) l'indication de la mesure discriminatoire et des biens, droits ou intérêts touchés par cette mesure;

(c) nationality of the claimant and of his predecessor in title, when applicable, at the time of the discriminatory measure.

3. Applications shall, if possible, include information concerning the person to whom the property, rights or interests were transferred, and concerning the person holding the property, rights or interests at the time of filing of the application.

4. Furthermore, all information and documents available to the claimant which refer to the property, rights or interests and to the discriminatory measure taken in respect of the property, rights or interests shall be attached to the application in the original or in a certified copy. On request, the original shall be submitted.

### Section 3

Proceedings before the Federal Higher Authority shall be free of charge, except where frivolous or obviously unfounded applications are involved.

### Section 4

1. The Federal Higher Authority shall on its own motion (von Amts wegen) conduct the necessary investigations. For this purpose it may take evidence, in particular hear witnesses, experts and the parties concerned or cause their hearing before a court. Where a hearing under oath appears necessary, such oath shall be sworn before a court. The Federal Higher Authority shall be authorized to accept statements in lieu of oaths (eidesstattliche Versicherungen).

2. In addition to the claimants, all persons shall be considered parties concerned whose rights would be affected by the return or restoration.

3. The parties concerned shall be afforded an opportunity to state their views. They may be represented by agents or counsel. They shall be notified of the dates of the hearings ordered for the purpose of interrogation, pursuant to the second sentence of paragraph 1 of this section, and may attend these hearings. The documents filed by a party concerned shall be transmitted to the other parties.

### Section 5

Where realization of the return or restoration claim appears to be endangered, the Federal Higher Authority shall order the necessary interim measures to be taken for safeguarding the property, rights or interests.

(c) la nationalité de l'ayant-droit et, le cas échéant, celle de la personne dont il tient ses droits, à l'époque à laquelle la mesure discriminatoire est intervenue.

3. — La demande doit comprendre, si possible, des renseignements sur la personne à qui les biens, droits ou intérêts ont été transférés et sur celle qui détient les biens, droits ou intérêts à la date du dépôt de la demande.

4. — De plus, doivent être joints, en original ou en copie certifiée conforme, tous les renseignements et toutes les pièces dont dispose l'ayant-droit et qui concernent les biens, droits ou intérêts ainsi que les mesures discriminatoires dont ces derniers ont fait l'objet. L'original doit être présenté sur demande.

### Paragraphe 3

La procédure devant l'Autorité Fédérale Supérieure est exempte de frais, à moins qu'il ne s'agisse de demandes présentées à la légère (mutwillig) ou manifestement mal fondées.

### Paragraphe 4

1. — L'Autorité Fédérale Supérieure procède d'office (von Amts wegen) à toutes les enquêtes nécessaires. Elle peut à cet effet procéder à la recherche de preuves et, en particulier, procéder ou faire procéder par un tribunal à l'audition de témoins, d'experts ou de parties intéressées. Chaque fois qu'il apparaît nécessaire de faire prêter serment, ce serment doit être prêté devant un tribunal. L'Autorité Fédérale Supérieure est compétente pour recevoir toute déclaration écrite tenant lieu de serment (eidesstattliche Versicherung).

2. — Sont considérées comme parties intéressés, outre l'ayant-droit, toutes personnes dont les droits seraient affectés par la restitution ou la restauration.

3. — Les parties intéressées doivent se voir accorder la possibilité d'exposer leur point de vue. Elles peuvent se faire représenter par des agents ou des conseils. Elles doivent être avisées des audiences fixées pour les auditions prévues dans la seconde phrase de l'alinéa 1 du présent paragraphe, et peuvent assister à ces audiences. Les pièces soumises par l'une des parties intéressées doivent être communiquées aux autres parties.

### Paragraphe 5

L'Autorité Fédérale Supérieure peut, lorsque la réalisation du droit à restitution et à restauration lui paraît menacée, ordonner toutes mesures conservatoires nécessaires à la sauvegarde des biens, droits ou intérêts en cause.

### Section 6

The Federal Higher Authority shall use its good offices to bring about an amicable settlement between the parties concerned A compromise reached by the parties shall be recorded.

### Section 7

Decisions of the Federal Higher Authority shall state in writing the reasons upon which they are based and shall be served upon the parties concerned

### Section 8

1. The Federal Higher Authority shall take all measures required for the return and restoration or shall determine which measures shall be taken by the authority competent in the circumstances of the case

2 The Federal Higher Authority shall, in particular, be empowered to order, where necessary for the purpose of return or restoration, expropriation in favour of the Federal Republic which shall effect the return or restoration The nature and amount of the compensation to persons affected by the expropriation shall be fixed by a Federal law

## CHAPTER ELEVEN

## Facilities for the Embassies and Consulates of the Three Powers in the Federal Republic

Deleted.

## CHAPTER TWELVE

## Civil Aviation

### Article 1

The Federal Republic will assume full responsibility in the field of civil aviation in the Federal territory, subject to the provisions of Articles 2 to 6 inclusive of this Chapter and of any other agreement between the Three Powers and the Federal Republic which enters into force simultaneously with the present Convention.

### Article 2

The Federal Republic undertakes to adhere to the Convention on International Civil Aviation drawn up in Chicago in 1944 as soon at it is possible for it to do so in accordance with the terms of that Convention. Pending such adherence, the Federal Republic undertakes

(a) to apply and abide by the provisions of the Convention on International Civil Aviation and the International Air Services Transit Agreement of 1944, with respect to any other State which has declared its willingness to extend reciprocal treatment to the Federal Republic and which maintains diplomatic relations with the Federal Republic. The Federal Republic will make known its position in

### Paragraphe 6

L'Autorité Fédérale Supérieure doit s'efforcer de provoquer un arrangement à l'amiable entre les parties intéressées Tout compromis intervenu entre les parties intéressées doit faire l'objet d'un procès-verbal

### Paragraphe 7

Les décisions de l'Autorité Fédérale Supérieure doivent être motivées par écrit et notifiées aux personnes intéressées.

### Paragraphe 8

1. — L'Autorité Fédérale Supérieure prend toutes mesures nécessaires à la restitution et à la restauration, ou arrête les mesures que doit prendre l'autorité compétente selon les circonstances

2 — L'Autorité Fédérale Supérieure est en particulier habilitée à ordonner, dans la mesure nécessaire à la restitution et à la restauration, des expropriations au profit de la République Fédérale, qui se chargera de la restitution et de la restauration Une loi fédérale règlera la nature et le montant de l'indemnisation des personnes atteintes par l'expropriation.

## CHAPITRE ONZIEME

## Facilités dont disposeront les Ambassades et les Consulats des Trois Puissances sur le Territoire de la République Fédérale d'Allemagne

— supprimé —

## CHAPITRE DOUZIEME

## Aviation Civile

### Article 1

La République Fédérale assumera toutes les responsabilités dans le domaine de l'aviation civile sur le territoire fédéral sous réserve des dispositions des Articles 2 à 6 inclus du présent Chapitre et de tout autre accord conclu entre les Trois Puissances et la République Fédérale et entrant en vigueur en même temps que la présente Convention.

### Article 2

La République Fédérale s'engage à adhérer à la Convention sur l'Aviation Civile Internationale, élaborée à Chicago en 1944, dès que cela lui sera possible conformément aux dispositions de ladite Convention. En attendant qu'intervienne cette adhésion, la République Fédérale s'engage :

(a) à appliquer et respecter les dispositions de la Convention sur l'Aviation Civile Internationale et de l'Accord de 1944 relatif au Transit des Services Aériens Internationaux, à l'égard de tout autre État qui se sera déclaré prêt à lui accorder un traitement de réciprocité et qui entretiendra des relations diplomatiques avec elle La République Fédérale fera connaître sa position à cet égard aux this respect to the States concerned and will enter into appropriate arrangements necessary to put this undertaking into effect;

(b) to apply to the international civil aviation operations into and through the air space of the Federal Republic the fundamental principles of international air navigation and the standards, procedures and recommended practices as provided for by the Convention on International Civil Aviation of 1944;

(c) to accord to aircraft of foreign countries which may be granted rights to engage in air services or to operate in the air space of the Federal Republic, in the exercise of those rights, the same rights and privileges with respect to the use of air navigation and other facilities in the Federal Republic as are or would be accorded to civil aircraft of the Federal Republic in similar operations.

### Article 3

The Federal Republic agrees to pursue, in its bilateral air transport agreements and arrangements, a liberal and non-discriminatory policy.

### Article 4

1. The Federal Republic will permit the air carriers of any State to continue their operations, including cabotage, in the Federal territory on a basis not less favourable than that enjoyed by them on the entry into force of the present Convention. Such permission shall not be withdrawn for a period of one year from the entry into force of the present Convention or until the coming into effect of air transport agreements or other authorization agreed with such State, whichever is earlier, provided that, where negotiations for an air transport agreement or other authorization have been begun or proposed by either party within such period of one year, such permission shall not be withdrawn before agreement has been reached thereon or, in event of failure to reach agreement, until the expiry of one year from the date of the proposal by either party for negotiations.

2. With respect to cabotage, such privileges may nevertheless be withdrawn if and when a German airline provides service adequate to meet public needs over a route or routes now serviced through the cabotage privileges of a foreign air carrier.

Etats intéressés et conclura les arrangements appropriés nécessaires à la mise en application de cet engagement;

(b) à appliquer à l'exploitation de l'aviation civile internationale dans l'espace aérien de la République Fédérale les principes fondamentaux de la navigation aérienne internationale ainsi que les standards, les procédures et les méthodes recommandés que prévoit la Convention sur l'Aviation Civile Internationale de 1944;

(c) à accorder aux aéronefs des pays étrangers, auxquels pourrait être consenti le droit d'exploiter des services aériens ou d'opérer dans l'espace aérien de la République Fédérale, dans l'exercice de ce droit, les mêmes droits et privilèges en ce qui concerne l'utilisation, dans la République Fédérale, de facilités de navigation aérienne et d'autres facilités que ceux qui sont ou seraient accordés pour des opérations analogues aux aéronefs civils de la République Fédérale.

### Article 3

La République Fédérale convient de poursuivre, dans ses accords et arrangements bilatéraux sur le transport aérien, une politique libérale et non discriminatoire.

### Article 4

1. — La République Fédérale autorisera les transporteurs aériens de tout Etat à poursuivre leur exploitation, y compris le cabotage, sur le territoire fédéral sur une base qui ne sera pas moins favorable que celle dont ils bénéficieront à la date d'entrée en vigueur de la présente Convention. Cette autorisation ne sera pas retirée jusqu'à la date d'expiration d'une période d'une année à partir de l'entrée en vigueur de la présente Convention, ou jusqu'à la date d'entrée en application d'accords sur le transport aérien ou d'autres autorisations convenues avec cet Etat, selon celle de ces deux dates qui sera la plus rapprochée, sous réserve que, lorsque des négociations en vue d'un accord sur le transport aérien ou d'une autre autorisation auront été commencées ou proposées par l'une des parties pendant cette période d'un an, l'autorisation ne sera pas retirée avant qu'un accord n'ait été conclu à ce sujet, ou, dans le cas où un accord ne pourra être conclu, avant l'expiration d'un délai d'une année à partir de la date à laquelle des négociations auront été proposées par l'une des parties.

2. — En ce qui concerne le cabotage, ces privilèges pourront néanmoins être retirés au cas et au moment où une entreprise aérienne allemande assurera un service suffisant pour faire face aux besoins publics sur un ou plusieurs itinéraires actuellement

Any change not involving withdrawal of cabotage privileges enjoyed on the entry into force of the present Convention shall be subject to the provisions of paragraph 1 of this Article and shall be made in accordance with the relevent principles and provisions of the Convention on International Civil Aviation.

3. The term "German airline" means an airline substantially owned and effectively controlled by German nationals or governmental authorities.

### Article 5

1. In the exercise of their responsibilities with respect to Berlin, the Three Powers will continue to regulate all air traffic to and from the Berlin air corridors established by the Allied Control Autority. The Federal Republic undertakes to facilitate and assist such traffic in every way on a basis no less favourable than that enjoyed on the entry into force of the present Convention; it undertakes to facilitate and assist unlimited and unimpeded passage through its air space for aircraft of the Three Powers en route to and from Berlin. The Federal Republic agrees to permit any necessary technical stops by such aircraft and further agrees that such aircraft may carry passengers, cargo and mail between places outside the Federal Republic and Berlin and between the Federal Republic and Berlin.

2. Nothing in this Article shall confer or affect any cabotage privileges within the Federal territory.

### Article 6

In the exercise of their responsibilities relating to Germany as a whole, the Three Powers will continue to exercise control with respect to aircraft of the Union of Soviet Socialist Republics utilizing the air space of the Federal Republic.

IN FAITH WHEREOF the undersigned representatives duly authorized thereto by their respective Governments have signed the present Convention, being one of the related Conventions listed in Article 8 of the Convention on Relations between the Three Powers and the Federal Republic of Germany.

desservis par un transporteur aérien étranger en vertu des privilèges de cabotage dont il bénéficie. Tout changement n'impliquent pas un retrait des privilèges de cabotage existant à la date d'entrée en vigueur de la présente Convention tombera sous le coup des dispositions du paragraphe 1 du présent Article et sera effectué conformément aux dispositions et aux principes applicables de la Convention sur l'Aviation Civile Internationale.

3. — L'expression « entreprise aérienne allemande » désigne une entreprise aérienne dont une partie importante de la propriété et le contrôle effectif appartiennent à des ressortissants allemands ou à des autorités gouvernementalles allemandes.

### Article 5

1. — Dans l'exercice de leurs responsabilités en ce qui concerne Berlin, les Trois Puissances continueront à réglementer tout le trafic aérien à destination ou en provenance des couloirs aériens de Berlin établis par l'Autorité Alliée de Contrôle. La République Fédérale s'engage à faciliter ce trafic et à lui apporter toute l'aide nécessaire sur une base qui ne sera pas moins favorable que celle dont il bénéficiera à la date d'entrée en vigueur de la présente Convention. Elle s'engage à faciliter et à aider le passage, sans limite ni obstacle, à travers son espace aérien, des aéronefs des Trois Puissances, en route vers Berlin ou en provenance de cette ville. La République Fédérale convient de permettre à ces aéronefs toutes les escales techniques nécessaires et convient, en outre, que ces aéronefs pourront transporter des passagers, du fret et du courrier entre les territoires extérieurs à la République Fédérale et Berlin et entre la République Fédérale et Berlin.

2. — Les dispositions du présent Article ne conferent ou n'affectent aucun privilège de cabotage sur le territoire de la République Fédérale.

### Article 6

Dans l'exercice de leurs responsabilités en ce qui concerne l'Allemagne dans son ensemble, les Trois Puissances continueront à exercer le contrôle des aéronefs de l'Union des Républiques Socialistes Soviétiques utilisant l'espace aérien de la République Fédérale.

EN FOI DE QUOI, les Plénipotentiaires soussignés, dûment autorisés à cet effet par leurs Gouvernements respectifs, ont apposé leurs signatures au bas de la présente Convention qui constitue l'une des Conventions rattachées énumérées dans l'Article 8 de la Convention sur les relations entre les Trois Puissances et la République Fédérale d'Allemagne.

**Done at BONN this twenty-sixth day of May, 1952, in three texts, in the English, French and German languages, all being equally authentic.**

**For the United States of America**
**signed:**
**Dean Acheson**

**For the United Kingdom of Great Britain and Northern Ireland**
**signed:**
**Anthony Eden**

**For the French Republic**
**signed:**
**Robert Schuman**

**For the Federal Republic of Germany**
**signed:**
**Adenauer**

## ANNEX

### to the Convention on the Settlement of Matters Arising out of the War and the Occupation

## Charter of the Arbitral Commission on Property, Rights and Interests in Germany

### PART I

### Duration, Seat, Composition and Organization

### Article 1

**1. The Commission is established for a period of ten years to run from the entry into force of the present Charter.**

**2. This period may be curtailed or extended by agreement between the Governments of the United States of America, the United Kingdom of Great Britain and Northern Ireland and the French Republic (hereinafter referred to as "the Three Powers") and of the Federal Republic of Germany (all collectively hereinafter referred to as "the Signatory States").**

**3. After the date of expiration of this period, the Commission will continue to function to complete the determination of any cases pending before it at that date.**

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**Fait à BONN, le vingt-sixième jour du mois de mai 1952, en trois textes, en langues française, anglaise et allemande, les trois versions faisant également foi.**

**Pour la République Française**
**signé:**
**Robert Schuman**

**Pour le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord**
**signé:**
**Anthony Eden**

**Pour les Etats-Unis d'Amérique**
**signé:**
**Dean Acheson**

**Pour la République Fédérale d'Allemagne**
**signé:**
**Adenauer**

## ANNEXE

### à la Convention sur le Règlement de Questions issues de la Guerre et de l'Occupation

## Charte de la Commission Arbitrale sur les Biens, Droits et Intérêts en Allemagne

### TITRE I

### Durée, Siège, Composition et Organisation

### Article 1

**1. — La Commission est instituée pour une durée de dix années, qui commenceront à courir à compter de la date d'entrée en vigueur de la présente Charte.**

**2. — Cette période pourra être abrégée ou étendue par accord entre les Gouvernements de la République Française, des Etats-Unis d'Amérique et du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord (ci-après dénommés « les Trois Puissances ») et de la République Fédérale d'Allemagne (ci-après conjointement dénommés « les Etats Signataires »).**

**3. — Après la date d'expiration de cette période, la Commission continuera à fonctionner pour achever le règlement des affaires en instance devant elle à cette date.**

# ANNEX TO THE CONVENTION ON THE SETTLEMENT OF MATTERS ARISING OUT OF THE WAR AND THE OCCUPATION[1]

## CHARTER OF THE ARBITRAL COMMISSION ON PROPERTY, RIGHTS AND INTERESTS IN GERMANY

### Part I

### DURATION, SEAT, COMPOSITION AND ORGANISATION

*Article 1*

1. The Commission is established for a period of ten years to run from the entry into force of the present Charter.

2. This period may be curtailed or extended by agreement between the Governments of the United States of America, the United Kingdom of Great Britain and Northern Ireland and the French Republic (hereinafter referred to as " the Three Powers ") and of the Federal Republic of Germany (all collectively hereinafter referred to as " the Signatory States ").

3. After the date of expiration of this period, the Commission will continue to function to complete the determination of any cases pending before it at that date.

*Article 2*

The seat of the Commission shall be at the seat of the Arbitration Tribunal referred to in Article 9 of the Convention on Relations between the Three Powers and the Federal Republic of Germany. The Commission may, however, sit and exercise its functions elsewhere when it deems it desirable to do so.

*Article 3*

1. The Commission shall be composed of nine permanent members who shall have the qualifications required in their respective countries for appointment to judicial office or equivalent qualifications.

2. The nine permanent members of the Commission shall be appointed as follows :

(*a*) three members appointed by the Governments of the Three Powers, one by each Government;
(*b*) three members appointed by the Federal Government; and
(*c*) three members (hereinafter referred to as " the neutral members ") appointed by agreement between the Governments of the Three Powers and the Federal Government, none of whom shall be a national of any State which participated in the War.

3. The Governments of the Three Powers and the Federal Government shall make known their first appointments not later than thirty days after the entry into force of the present Charter. Within the same period, the Governments of the Three Powers and the Federal Government shall agree upon the three neutral members. If, after the expiry of such period, one or more of the neutral members shall not have been appointed,

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[1] See p. 220 of this volume.

either the Governments of the Three Powers or the Federal Government may request the President of the International Court of Justice to appoint such neutral member or members.

4. Appointments to fill vacancies shall be made in the same manner as the appointment of the permanent member to be replaced. However, if a vacancy to be filled by the Government of one of the Three Powers or the Federal Government is not so filled within one month of its occuring, either the Governments of the Three Powers or the Federal Government may request the President of the International Court of Justice to make an interim appointment to the vacancy of a person who shall not be a national of any State which participated in the War and who shall serve for a period of six months or until the vacancy is filled in the normal manner, whichever is longer. If the member to be replaced is a neutral member, the Governments of the Three Powers or the Federal Government may request the President of the International Court of Justice to make such appointment, if the agreement envisaged by sub-paragraph (*c*) of paragraph 2 of this Article has not been reached within one month of the vacancy occurring.

5. The Commission may, by majority vote, declare a vacancy if, in its opinion, a member has, without reasonable excuse, failed or refused to participate in the hearing or decision of a case to which he has been assigned.

6. The Government of any State which has acceded to the present Charter pursuant to Article 17 hereof may appoint a member adjoint by notification addressed to the Governments of the Three Powers and the Federal Government. Any such member adjoint shall meet the requirements specified in paragraph 1 and shall be subject to the provisions of paragraph 5 of this Article. The appointing Government may fill a vacancy by notification addressed to the Governments of the Three Powers and the Federal Government.

7. The Secretariat of the Arbitration Tribunal shall serve the Commission as its administrative office.

### *Article 4*

1. The permanent members shall be appointed for the duration of the Commission including the additional period provided for in paragraph 3 of Article 1 of the present Charter. Members adjoint may be appointed for shorter periods or for particular cases.

2. Members of the Commission shall not engage in any activity incompatible with the proper exercise of their duties, nor shall they participate in the adjudication of any case with which they have previously been concerned in another capacity or in which they have a direct interest. Differences of opinion regarding the applicability of this paragraph shall be resolved by the Commission.

3. (*a*) During and after their terms of office, the members of the Commission shall enjoy immunity from suit in respect of acts performed in the exercise of their official duties.

(*b*) The members of the Commission who are not of German nationality shall, moreover, enjoy in the Federal territory the same privileges and immunities as are accorded members of diplomatic missions. If sittings or official acts take place in the territory of one of the Three Powers, the members of the Commission who are not of the nationality of the country in which the sitting or act takes place shall enjoy diplomatic privileges and immunities in such country.

4. Every member of the Commission shall, before taking office, make a declaration at a public session that he will exercise his duties impartially and conscientiously.

5. Subject to the provisions of paragraph 5 of Article 3 of the present Charter, no member may be dismissed before the expiry of his term of office, except by agreements between the Governments of the Three Powers and the Federal Government and,

(*a*) in the case of a member appointed by the Government of an acceding State, with the agreement of such Government;

(*b*) in the case of a member appointed by the President of the International Court of Justice, with the consent of its President.

6. Any member may at any time resign his office by giving due notice thereof under his hand to the appointing Government or Governments and to the President of the Commission. But he shall continue in office until his successor has taken his seat, unless the appointing Government or Governments and the President agree otherwise.

### *Article 5*

1. The Commission shall elect its President from the three neutral members to serve for two years. The President shall be eligible for reelection. If the President shall cease to be a member of the Commission, the Commission shall elect a new President after his successor as a member of the Commission has been appointed. The remaining neutral members shall serve as Vice-Presidents.

2. The Commission, presided over by the President or one of the Vice-Presidents, shall sit either in plenary session or in Chambers of three members.

3. A plenary session shall, in principle, include all the permanent members of the Commission. A quorum of five members shall suffice to constitute a plenary session; it shall be composed of an uneven number of members, and in any case shall consist of an equal number of the members appointed by the Governments of the Three Powers and of those appointed by the Federal Government, and at least one neutral member. Members adjoint shall not take any part in a plenary session.

4. (*a*) Chambers shall be composed of one of the members appointed by the Governments of the Three Powers, one of the members appointed by the Federal Government and one neutral member. The Commission in plenary session shall nominate the members of such Chambers, define the categories of cases with which a Chamber will be concerned or assign a particular case to a Chamber. Subject to the provisions of paragraph 5 of Article 13 of the present Charter, any decision of a Chamber, on a case assigned to it, shall be deemed to be a final decision of the Commission.

(*b*) In cases heard by Chambers where any of the parties is one of the Three Powers or its national or resident, the member appointed by the Government of such Power shall sit unless such party otherwise agrees.

(*c*) in cases heard by Chambers, other than those referred to in sub-paragraph (*b*) of this paragraph,

(i) where any of the parties is one of the acceding States or its national or resident, the member appointed by the Government of one of the Three Powers shall be replaced by the member adjoint appointed by the Government of such acceding State upon the latter's application to the President;

(ii) where more than one of the parties are acceding States or nationals or residents of acceding States, such States, nationals or residents may agree to the replacement of the member appointed by the Government of one of the Three Powers by one of the members adjoint appointed by the Governments of the States which, or whose nationals or residents, are parties, and such replacement shall be made upon application of all the States, nationals or residents concerned. In default of such agreement, the member appointed by the Government of one of the Three Powers shall sit in the Chamber.

5. The Commission shall sit in public unless it decides otherwise. The deliberations of the Commission shall be and shall remain secret as shall all facts brought to its attention in closed session.

## Part II

### COMPETENCE, POWERS AND APPLICABLE LAW

### *Article 6*

1. The Commission shall have jurisdiction in all disputes envisaged under Article 7 of Chapter Five and Article 12 of Chapter Ten of the Convention on the Settlement of Matters Arising out of the War and the Occupation (hereinafter referred to as " the Convention "). Subject to the provisions of paragraph 2 of Article 9 and of Article 10 of the Charter of the Arbitration Tribunal, the Commission may decide questions as to the extent of its jurisdiction. The President of the Commission may ask the Arbitration Tribunal for an advisory opinion, under Article 25 of its Charter, as to the extent of the jurisdiction of the Commission.

2. The jurisdiction, in the first instance or on appeal, as the case may be, of the Commission in disputes within its competence which are submitted to it shall be exclusive and no court or tribunal of the Signatory States or of any other State, nor any other national or international body, shall have jurisdiction in such disputes.

3. The Commission shall also have jurisdiction in any other matter which may be referred to it from time to time by agreement between the Signatory States. If any acceding State is directly concerned in the matter, the consent of its Government shall also be necessary.

4. Disputes within the jurisdiction of the Commission may be submitted by any of the Signatory States or any State which has acceded to the present Charter, by a

national or resident of any such State or of any territorial entity which is administered or controlled by any such State or for whose international relations such State is responsible, or by a juristic person established under the laws of any suchState or territorial entity.

5. The Commission shall be competent to decide questions of law and fact.

### *Article 7*

1. The Commission or, in a case of urgency, the President, shall have the power to issue such orders as may be necessary to conserve the respective rights of the parties pending the judgment of the Commission. Any orders issued by the President under this Article may be confirmed, amended or annulled by the Commission within seventy-two hours after the notification thereof to the parties.

2. Any party affected by such an order of the Commission or of the President who shall not have been heard prior to the making thereof may apply to the Commission for the amendment or annulment of the order at such time and in such manner as may be prescribed in the rules of procedure envisaged in Article 14 of the present Charter.

### *Article 8*

In arriving at its decisions, the Commission shall apply the provisions of the Convention and of legislation made applicable thereby. Where necessary to supplement or interpret such provisions, or in the absence of any relevant provisions, it shall apply the general principles of international law and of justice and equity.

## Part III

## PROCEDURE

### *Article 9*

1. The official languages of the Commission shall be French, English and German. However, the President may, with the consent of the parties, direct that only one or two of these languages shall be used in the proceedings in any cause.

2. Decisions of the Commission shall be delivered in all three languages.

### *Article 10*

Proceedings before the Commission shall be instituted by a written complaint which shall contain a statement of the facts giving rise to the dispute and the arguments put forward by the complainant. Unless the Commission decides otherwise, an answer to the complaint shall be filed within one month of the service of the complaint. Further pleadings, if any, shall be filed as the Commission may direct.

### *Article 11*

1. States as parties to the proceedings before the Commission shall be represented by agents. They may be assisted by counsel.

2. Natural persons may appear before the Commission either in person or by counsel, and juristic persons either by authorised representatives or by counsel.

3. Any government agent shall be authorised to present orally and in writing arguments and submissions in cases to which a national or resident of his State is a party.

4. The Commission may prescribe the qualifications which counsel must possess in order to be admitted.

5. The agents, counsel and representatives referred to in this Article shall enjoy immunity from suit in respect of acts performed in the exercise of their duties. Any natural persons appearing in person shall enjoy the same immunity.

### *Article 12*

The Commission shall have power to demand the production of evidence, documentary or other, to require the attendance of witnesses to testify, to request expert opinion, and to direct inquiries to be made. To this end the Commission may request the aid of the courts of any Signatory or acceding State.

### *Article 13*

1. All decisions of the Commission shall be in the form of judgments or orders and shall be by majority vote of the members taking part.

2. Subject only to this Article and to paragraph 2 of Article 9 and Article 10 of the Charter of the Arbitration Tribunal, all final judgments and orders of the Commission shall be binding on all parties and shall not be subject to appeal.

3. All judgments shall be delivered in writing and in open court. They shall include a statement of the facts and the reasons on which they are based.

4. Final decisions of the Commission in plenary session shall not be subject to appeal. The final decision on a case assigned to a Chamber must be taken by the Arbitral Commission in plenary session if the Chamber, before it has pronounced a final decision, decides to refer the case to the plenary session.

5. Decisions of the Chambers may, by leave of the Chamber or the plenary session, be appealed on the law to the plenary session. Leave to appeal shall be sought within thirty days from the time the written decision is served upon the party, and such leave shall lapse if no appeal is lodged within thirty days from the date on which it is granted.

6. An appeal shall always lie to the plenary session or the Chamber from any order made by a member of the Commission sitting singly, within thirty days after service of such order upon the party concerned.

7. The revision of a final decision may not be requested of the Commission except upon the grounds of the discovery of a fact which is of such a nature as to exercise a decisive influence, and of which the Commission and the party requesting revision had been unaware before the pronouncement of the decision. The Commission sitting in plenary session shall decide whether such a revision is warranted.

### *Article 14*

1. The proceedings shall consist of two parts: written and oral. Oral proceedings may be dispensed with if both parties so request.

2. The Commission shall determine rules of procedure consistent with the present Charter. These rules may provide for the rendering of judgments on default if a party fails to appear or to file pleadings. They may also provide for the assignment to any member of the Commission of special duties.

### *Article 15*

1. The Commission may adopt rules of assessment for court costs, including rules enabling persons to sue or be sued *in forma pauperis*.

2. In general, each party to a proceeding shall pay its own costs. However, the Commission may make an order as to the costs of parties in exceptional cases, recording its reasons as a part of the judgment, where the proceedings have been found to be malicious or vexatious.

## Part IV

### ADMINISTRATION AND EXPENSES

### *Article 16*

1. Each of the Signatory States and any State acceding to the present Charter shall bear the full charge by way of salary and allowances of each of the members of the Commission appointed by itself.

2. The operating costs of the Commission (including the salaries and allowances of the neutral members) shall be borne equally by the Three Powers, on the one hand, and the Federal Republic, on the other.

3. The administration of the Commission, the accommodations of the Commission, its members and its staff, the salaries and allowances of the neutral members, staff appointments and staff salaries shall be regulated by a subsidiary administrative agreement between the Signatory States.

## Part V

### FINAL CLAUSES

### *Article 17*

1. The present Charter shall enter into force on the entry into force of the Convention.

2. Any State may accede to the present Charter by written notification addressed to each of the Signatory States through diplomatic channels and by the deposit with the Federal Government of an instrument of accession to the present Charter. The present Charter shall be binding on each acceding State as of the date of deposit of its instrument of accession.

3. Any State which accedes to the present Charter shall be deemed to become thereby a principal party to the agreement between the Signatory States contained in Chapter Five and Chapter Ten of the Convention.

4. Any State acceding to the present Charter agrees to be bound by decisions of the Arbitration Tribunal pursuant to paragraph 2 of Article 9 of its Charter concerning the extent of the jurisdiction of the Commission.

## Annex 17

# CONVENTION ON RELATIONS BETWEEN THE THREE POWERS AND THE FEDERAL REPUBLIC OF GERMANY OF 26 MAY 1952 AS AMENDED ON 23 OCTOBER 1954

## No. 4759

## UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, UNITED STATES OF AMERICA, FRANCE and FEDERAL REPUBLIC OF GERMANY

**Convention (with annex) on Relations between the Three Powers and the Federal Republic of Germany, signed at Bonn, on 26 May 1952 (as amended by Schedule I to the Protocol on the Termination of the Occupation Régime in the Federal Republic of Germany, signed at Paris on 23 October 1954)**

*Official texts: English, French and German.*

*Registered by the United Kingdom of Great Britain and Northern Ireland on 15 June 1959.*

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## ROYAUME-UNI DE GRANDE-BRETAGNE ET D'IRLANDE DU NORD, ÉTATS-UNIS D'AMÉRIQUE, FRANCE et RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE

**Convention (avec annexe) sur les relations entre les Trois Puissances et la République fédérale d'Allemagne, signée à Bonn, le 26 mai 1952 (texte amendé conformément à l'annexe I du Protocole sur la cessation du régime d'occupation dans la République fédérale d'Allemagne, signé à Paris le 23 octobre 1954)**

*Textes officiels anglais, français et allemand.*

*Enregistrée par le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord le 15 juin 1959.*

# No. 4759. CONVENTION[1] BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, THE UNITED STATES OF AMERICA, FRANCE AND THE FEDERAL REPUBLIC OF GERMANY ON RELATIONS BETWEEN THE THREE POWERS AND THE FEDERAL REPUBLIC OF GERMANY, SIGNED AT BONN ON 26 MAY 1952 (AS AMENDED BY SCHEDULE I TO THE PROTOCOL ON THE TERMINATION OF THE OCCUPATION RÉGIME IN THE FEDERAL REPUBLIC OF GERMANY, SIGNED AT PARIS ON 23 OCTOBER 1954)[2]

The United States of America, the United Kingdom of Great Britain and Northern Ireland, the French Republic, and the Federal Republic of Germany have entered into the following Convention setting forth the basis for their new relationship :

### *Article 1*

1. On the entry into force of the present Convention the United States of America, the United Kingdom of Great Britain and Northern Ireland and the French Republic (hereinafter and in the related Conventions[3] sometimes referred to as "the Three Powers") will terminate the Occupation régime in the Federal Republic, revoke the Occupation Statute[4] and abolish the Allied High Commission and the Offices of the Land Commissioners in the Federal Republic.

2. The Federal Republic shall have accordingly the full authority of a sovereign State over its internal and external affairs.

### *Article 2*

In view of the international situation, which has so far prevented the re-unification of Germany and the conclusion of a peace settlement, the Three Powers retain the rights and the responsibilities, heretofore exercised or held by them, relating

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[1] Came into force on 5 May 1955, the instruments of ratification having been deposited with the Government of the Federal Republic of Germany on the dates indicated below :

| | |
|---|---|
| Federal Republic of Germany | 20 April 1955 |
| United States of America | 20 April 1955 |
| France | 5 May 1955 |
| United Kingdom of Great Britain and Northern Ireland | 5 May 1955 |

[2] See p. 253 of this volume.

[3] See p. 334 of this volume.

[4] United Kingdom : "Germany No. 1 (1949)", Cmd. 7677 (Annex 1) and "Germany No. 2 (1951)", Cmd. 8252.

to Berlin and to Germany as a whole, including the re-unification of Germany and a peace settlement. The rights and responsibilities retained by the Three Powers relating to the stationing of armed forces in Germany and the protection of their security are dealt with in Articles 4 and 5 of the present Convention.

### *Article 3*

1. The Federal Republic agrees to conduct its policy in accordance with the principles set forth in the Charter of the United Nations and with the aims defined in the Statute of the Council of Europe.[1]

2. The Federal Republic affirms its intention to associate itself fully with the community of free nations through membership in international organisations contributing to the common aims of the free world. The Three Powers will support applications for such membership by the Federal Republic at appropriate times.

3. In their negotiations with States with wich the Federal Republic maintains no relations, the Three Powers will consult with the Federal Republic in respect of matters directly involving its political interests.

4. At the request of the Federal Government, the Three Powers will arrange to represent the interests of the Federal Republic in relations with other States and in certain international organisations or conferences, whenever the Federal Republic is not in a position to do so itself.

### *Article 4*

1. Pending the entry into force of the arrangements for the German Defence Contribution, the Three Powers retain the rights, heretofore exercised or held by them, relating to the stationing of armed forces in the Federal Republic. The mission of these forces will be the defence of the free world, of which Berlin and the Federal Republic form part. Subject to the provisions of paragraph 2 of Article 5 of the present Convention, the rights and obligations of these forces shall be governed by the Convention on the Rights and Obligations of Foreign Forces and their Members in the Federal Republic of Germany (hereinafter referred to as "the Forces Convention") referred to in paragraph 1 of Article 8 of the present Convention.

2. The rights of the Three Powers, heretofore exercised or held by them, which relate to the stationing of armed forces in Germany and which are retained, are not affected by the provisions of this Article insofar as they are required for the exercise of the rights referred to in the first sentence of Article 2 of the present Con-

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[1] United Nations, *Treaty Series*, Vol. 87, p. 103; Vol. 100, p. 302, and Vol. 196, p. 347.

vention. The Federal Republic agrees that, from the entry into force of the arrangements for the German Defence Contribution, forces of the same nationality and effective strength as at that time may be stationed in the Federal Republic. In view of the status of the Federal Republic as defined in Article 1, paragraph 2 of the present Convention, and in view of the fact that the Three Powers do not desire to exercise their rights regarding the stationing of armed forces in the Federal Republic, insofar as it is concerned, except in full accord with the Federal Republic, a separate Convention deals with this matter.

### *Article 5*

1. Pending the entry into force of the arrangements for the German Defence Contribution, the following provisions shall be applicable to the forces stationed in the Federal Republic :

(*a*) The Three Powers will consult with the Federal Republic, insofar as the military situation permits, with regard to all questions concerning the stationing of these forces. The Federal Republic will, according to the present Convention and the related Conventions, co-operate, within the framework of its Basic Law, to facilitate the mission of these forces ;

(*b*) the Three Powers will obtain the consent of the Federal Republic before bringing into the Federal territory, as part of their forces, contingents of the armed forces of any nation not now providing such contingents. Such contingents may nevertheless be brought into the Federal territory without the consent of the Federal Republic in the event of external attack or imminent threat of such attack, but, after the elimination of the danger, may only remain with its consent.

2. The rights of the Three Powers, heretofore held or exercised by them, which relate to the protection of the security of armed forces stationed in the Federal Republic and which are temporarily retained, shall lapse when the appropriate German authorities have obtained similar powers under German legislation enabling them to take effective action to protect the security of those forces, including the ability to deal with a serious disturbance of public security and order. To the extent that such rights continue to be exercisable they shall be exercised only after consultation, insofar as the military situation does not preclude such consultation, with the Federal Government and with its agreement that the circumstances require such exercise. In all other respects the protection of the security of those forces shall be governed by the Forces Convention or by the provisions of the Agreement which replaces it and, except as otherwise provided in any applicable agreement, by German law.

### *Article 6*

1. The Three Powers will consult with the Federal Republic in regard to the exercise of their rights relating to Berlin.

2. The Federal Republic, on its part, will co-operate with the Three Powers in order to facilitate the discharge of their responsibilities with regard to Berlin.

### *Article 7*

1. The Signatory States are agreed that an essential aim of their common policy is a peace settlement for the whole of Germany, freely negotiated between Germany and her former enemies, which should lay the foundation for a lasting peace. They further agree that the final determination of the boundaries of Germany must await such a settlement.

2. Pending the peace settlement, the Signatory States will co-operate to achieve, by peaceful means, their common aim of a re-unified Germany enjoying a liberal-democratic constitution, like that of the Federal Republic, and integrated within the European community.

3. Deleted.

4. The Three Powers will consult with the Federal Republic on all matters involving the exercise of their rights relating to Germany as a whole.

### *Article 8*

1. (*a*) The Signatory States have concluded the following related Conventions:

Convention on the Rights and Obligations of Foreign Forces and their Members in the Federal Republic of Germany;[1]

Finance Convention;[2]

Convention on the Settlement of Matters Arising out of the War and the Occupation.[3]

(*b*) The Convention on the Rights and Obligations of Foreign Forces and their Members in the Federal Republic of Germany and the Agreement on the Tax Treatment of the Forces and their Members[4] signed at Bonn on 26 May, 1952, as amended by the Protocol signed at Bonn on 26 July, 1952, shall remain in force until the entry into force of new arrangements setting forth the rights and obligations of the forces of the Three Powers and other States having forces in the territory of the Federal Republic. The new arrangements will be based on the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, signed at London on 19 June, 1951,[1] supplemented by such provisions as are necessary in view of the special conditions existing in regard to the forces stationed in the Federal Republic.

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[1] United Kingdom: *Treaty Series No. 11 (1959)*, Cmnd. 654. Will also appear in United Nations, *Treaty Series*, Vol. 332, under No. 4760.

[2] United Kingdom: *Treaty Series No. 12 (1959)*, Cmnd. 655. Will also appear in United Nations, *Treaty Series*, Vol. 332, under No. 4761.

[3] United Kingdom: *Treaty Series No. 13 (1959)*, Cmnd. 656. Will also appear in United Nations, *Treaty Series*, Vol. 332, under No. 4762.

[4] United Kingdom: *Treaty Series No. 14 (1959)*, Cmnd. 657. Will also appear in United Nations, *Treaty Series*, Vol. 332, under No. 4763.

(c) The Finance Convention shall remain in force until the entry into force of the new arrangements negotiated in pursuance of paragraph 4 of Article 4 of that Convention with other member Governments of the North Atlantic Treaty Organisation who have forces stationed in the Federal territory.

2. During the transitional period provided for in paragraph 4 of Article 6 of Chapter One of the Convention on the Settlement of Matters Arising out of the War and the Occupation, the rights of the three Signatory States referred to in that paragraph shall be retained.

### *Article 9*

1. There shall be established an Arbitration Tribunal which shall function in accordance with the provisions of the annexed Charter.

2. The Arbitration Tribunal shall have exclusive jurisdiction over all disputes arising between the Three Powers and the Federal Republic under the provisions of the present Convention or the annexed Charter or any of the related Conventions which the parties are not able to settle by negotiation or by other means agreed between all the Signatory States, except as otherwise provided by paragraph 3 of this Article or in the annexed Charter or in the related Conventions.

3. Any dispute involving the rights of the Three Powers referred to in Article 2, the first two sentences of paragraph 1 of Article 4, the first sentence of paragraph 2 of Article 4 and the first two sentences of paragraph 2 of Article 5, or action taken thereunder, shall not be subject to the jurisdiction of the Arbitration Tribunal or of any other tribunal or court.

### *Article 10*

The Signatory States will review the terms of the present Convention and the related Conventions

(a) upon request of any one of them, in the event of the re-unification of Germany, or an international understanding being reached with the participation or consent of the States parties to the present Convention on steps towards bringing about the re-unification of Germany, or the creation of a European Federation ; or

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[1] United Nations, *Treaty Series*, Vol. 199, p. 67 ; Vol. 200, p. 340 ; Vol. 260, p. 452, and Vol. 286, p. 380.

(*b*) in any situation which all of the Signatory States recognise has resulted from a change of a fundamental character in the conditions prevailing at the time of the entry into force of the present Convention.

In either case they will, by mutual agreement, modify the present Convention and the related Conventions to the extent made necessary or advisable by the fundamental change in the situation.

### *Article 11*

1. Deleted.

2. Deleted.

3. The present Convention and the related Conventions shall be deposited in the Archives of the Government of the Federal Republic of Germany, which will furnish each Signatory State with certified copies thereof and notify each such State of the date of the entry into force of the present Convention and the related Conventions.

IN FAITH WHEREOF the undersigned representatives duly authorised thereto by their respective Governments have signed the present Convention.

DONE at Bonn this twenty-sixth day of May, 1952, in three texts, in the English, French and German languages, all being equally authentic.

For the United States of America :
[L.S.] Dean ACHESON

For the United Kingdom of Great Britain and Northern Ireland :
[L.S.] Anthony EDEN

For the French Republic :
[L.S.] Robert SCHUMAN

For the Federal Republic of Germany :
[L.S.] ADENAUER

## ANNEX A

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# ANNEX B

## CHARTER OF THE ARBITRATION TRIBUNAL

### PART I. — COMPOSITION, ORGANISATION AND SEAT OF THE TRIBUNAL

### *Article 1*

1. The Tribunal shall be composed of nine members who shall have the qualifications required in their respective countries for appointment to the highest judicial offices or shall be lawyers of recognised competence in international law.

2. The nine members of the Tribunal shall be appointed as follows :

(*a*) three members appointed by the Governments of the Three Powers, one by each Government ;

(*b*) three members appointed by the Federal Government ;

(*c*) a President and two Vice-Presidents (hereinafter referred to also as "the neutral members") appointed by agreement between the Governments of the Three Powers and the Federal Government, none of whom shall be a national of any one of the Three Powers or a German national.

3. The Governments of the Three Powers and the Federal Government shall make known their first appointments not later than sixty days after the entry into force of the present Charter. Within the same period the Governments of the Three Powers and the Federal Government shall agree upon the three neutral members, one of whom shall be nominated as President and the other two as Vice-Presidents. If, after the expiry of such period, one or more of the neutral members shall not have been agreed upon, either the Governments of the Three Powers or the Federal Government may request the President of the International Court of Justice to nominate such neutral member or members.

4. Appointments to fill vacancies shall be made in the same manner as the appointment of the member to be replaced. However, if a vacancy to be filled by the Government of one of the Three Powers or the Federal Government is not so filled within one month of its occurring, either the Governments of the Three Powers or the Federal Government may request the President of the International Court of Justice to make an interim appointment to the vacancy of a person who shall not be a national of any one of the Three Powers or a German national and who shall serve for a period of six months or until the vacancy is filled in the normal manner, whichever is longer. If the member to be replaced is a neutral member, the Governments of the Three Powers or the Federal Government may request the President of the International Court of Justice to make such appointment, if the agreement envisaged by sub-paragraph (*c*) of paragraph 2 of this Article has not been reached within one month of the vacancy occurring.

5. The Tribunal may, by majority vote, declare a vacancy if, in its opinion, a member has, without reasonable excuse, failed or refused to participate in the hearing or decision of a case to which he has been assigned.

### *Article 2*

**1. The members of the Tribunal shall be appointed for four years. Th**
**re-appointed after the expiration of their terms of office.**

**2. A member whose term of office has expired shall nevertheless conti**
**charge his duties until his successor is appointed. After such appointmen**
**unless the President of the Tribunal directs otherwise, continue to discharge**
**respecting pending cases in which he has participated until such cases have b**
**decided.**

**3. Members of the Tribunal shall not engage in any activity incompatib**
**proper exercise of their duties, nor shall they participate in the adjudication**
**with which they have previously been concerned in another capacity or in**
**have a direct interest. Differences of opinion regarding the applicability of this**
**shall be resolved by the Tribunal.**

**4. (*a*) During and after their terms of office, the members of the Trib**
**enjoy immunity from suit in respect of acts performed in the exercise of th**
**duties.**

**(*b*) The members of the Tribunal who are not of German nationality shall,**
**enjoy in the Federal territory the same privileges and immunities as are acco**
**of diplomatic missions. If sittings or official acts take place in the territor**
**the Three Powers, the members of the Tribunal who are not of the nationa**
**country in which the sitting or act takes place shall enjoy diplomatic pri**
**immunities in such country.**

**5. Every member of the Tribunal shall, before taking office, make a**
**at a public session that he will exercise his duties impartially and conscientiou**

**6. Subject to the provisions of paragraph 5 of Article 1 of the prese**
**no member may be dismissed before the expiry of his term of office, or befo**
**mination of his duties in accordance with paragraph 2 of this Article, except by**
**between the Governments of the Three Powers and the Federal Government**
**case of a member appointed by the President of the International Court**
**by agreement between the Governments of the Three Powers and the Federal Go**
**with the consent of the President of the International Court of Justice.**

### *Article 3*

**Deleted.**

### *Article 4*

**1. The Tribunal, presided over by the President or one of the Vice-**
**shall sit either in plenary session or in Chambers of three members.**

**2. A plenary session shall, in principle, include all the members of the**
**A quorum of five members shall suffice to constitute a plenary session ; it shall b**
**of an uneven number of members and in any case shall consist of an equal nu**

members appointed by the Governments of the Three Powers and of those appointed by the Federal Government, and at least one neutral member.

3. Chambers shall be composed of one of the members appointed by the Governments of the Three Powers, one of the members appointed by the Federal Government and one neutral member.

4. The Tribunal in plenary session shall nominate the members of such Chambers, define the categories of cases with which a Chamber will be concerned or assign a particular case to a Chamber.

5. Any decision of a Chamber, on a case assigned to it, shall be deemed to be a decision of the Tribunal.

6. The final decision on a case assigned to a Chamber must be taken by the Tribunal in plenary session, if one of the parties so requests before the Chamber itself has pronounced a final decision.

### *Article 5*

The Tribunal shall sit in public unless it decides otherwise. The deliberations of the Tribunal shall be and shall remain secret as shall all facts brought to its attention in closed session.

### *Article 6*

1. A Registrar shall be responsible for the administration of the Tribunal; he shall have the necessary staff at his disposal. The Registrar shall handle the transmission of documents, keep a record of petitions submitted to the Tribunal and be responsible for the archives and accounts of the Tribunal.

2. The first Registrar shall be appointed by agreement between the Three Powers and the Federal Republic. The Registrar shall be a permanent official subject to dismissal and replacement only by the Tribunal.

3. The Registrar, upon receipt of the first petition filed pursuant to Article 14 of the present Charter, shall immediately notify the President, who shall thereupon call the first meeting of the Tribunal in plenary session at the seat of the Tribunal as soon as practicable, for the purpose of determining the Rules of Procedure and attending to other business. Thereafter the Tribunal shall meet as business requires.

4. Paragraphs 3 and 4 of Article 2 of the present Charter shall not become effective until the first meeting in plenary session referred to in paragraph 3 of this Article.

### *Article 7*

The seat of the Tribunal shall be located within the Federal territory at such place as shall be determined by a subsidiary administrative agreement between the Governments of the Three Powers and the Federal Government. The Tribunal may, however, sit and exercise its functions elsewhere, when it deems it desirable to do so.

### *Article 8*

Questions pertaining to the operating costs of the Tribunal, including th
emoluments of members, as well as arrangements for securing the inviolabilit
premises of the Tribunal, shall be regulated by the subsidiary administrative ag
referred to in Article 7 of the present Charter.

## PART II. — COMPETENCE AND POWERS OF THE TRIBUNAL

### *Article 9*

1. The Tribunal shall have jurisdiction over all disputes arising between t
Powers and the Federal Republic under the provisions of the Convention on I
between the Three Powers and the Federal Republic of Germany (hereinafter
to as "the Convention") or the present Charter or any of the related Conventio
in Article 8 of the Convention, which the parties are not able to settle by ne
or by other means agreed between all the Signatory States, except disputes
excluded from its jurisdiction by the provisions of the Convention or the present
or any of the related Conventions.

2. (*a*) The Tribunal shall, moreover, have jurisdiction in respect of any
as to the extent of the competence of the following authorities :

the Board of Review referred to in Chapter One of the Convention on the Se
of Matters Arising out of the War and the Occupation ;

the Supreme Restitution Court referred to in Chapter Three of that Con

the Arbitral Commission on Property, Rights and Interests in Germany
to in Chapters Five and Ten of that Convention.

(*b*) A question as to the extent of the competence of these authorities may
at any time after the institution of proceedings before them and also after a final

(*c*) The decisions of the Tribunal on these questions shall be binding on the a
whose competence has been questioned.

3. The decisions of the authorities specified in sub-paragraph (*a*) of par
of this Article shall be subject to the jurisdiction of the Tribunal only to the ex
templated in sub-paragraph (*a*) of paragraph 2 of this Article, unless the co
expressly provided in one of the related Conventions.

4. Decisions of the authorities provided for or referred to in the related Con
other than those specified in sub-paragraph (*a*) of paragraph 2 of this Article,
subject to review by the Tribunal, whether on questions as to the extent of co
or on the merits, only to the extent contemplated by paragraph 1 of this Artic
the contrary is expressly provided in one of the related Conventions.

5. Only the Governments of one or more of the Three Powers, on the o
and the Federal Government, on the other, may be parties before the Tribunal
Federal Government brings a complaint against one or two of the Governmen
Three Powers, or if one or two of the Governments of the Three Powers brings a c

against the Federal Government, the other Government or Governments of the Three Powers may apply to the Tribunal to be joined as parties.

### *Article 10*

The Tribunal shall render its decisions in the form of judgments or directives which shall be binding on the parties.

### *Article 11*

1. The Signatory States undertake to comply with the decisions of the Tribunal and to take the action required of them by such decisions or necessary to remedy the situation.

2. If a Signatory State required by a decision of the Tribunal to take action to give effect to that decision is unable, or fails, to take such action within the time specified by the Tribunal, or if no time is specified, within a reasonable time, then that State, or any other Signatory State a party to the dispute, may apply to the Tribunal for a further decision as to alternative action to be taken by the defaulting State.

### *Article 12*

1. The Tribunal or, in a case of urgency, the President, shall have the power, by the issue of directives, to take such measures as may be necessary to conserve the respective rights of the parties pending the judgment of the Tribunal. Any directive issued by the President under this Article may be confirmed, amended or annulled by the Tribunal within seventy-two hours after the notification thereof to the parties.

2. The parties shall be afforded an opportunity to be heard prior to the issue of any directive by the Tribunal or by the President under this Article.

3. In the absence of the President, his powers under this Article shall be exercised by one of the Vice-Presidents to be designated by the President for this purpose.

## PART III. — PROCEEDINGS

### *Article 13*

The official languages of the Tribunal shall be French, English, and German.

### *Article 14*

Proceedings before the Tribunal shall be instituted by a written petition filed with the Tribunal which shall contain a statement of the facts giving rise to the dispute, reference to the provisions of the Convention or the present Charter or the related Conventions which are invoked, legal argument, and conclusions.

### *Article 15*

1. The parties shall be represented by agents. They may be assisted by counsel.

2. Such agents and counsel shall enjoy immunity from suit in respect of acts performed in the exercise of their duties.

### *Article 16*

1. The presiding member may summon the agents in order to be informed of their wishes concerning the time limits and conduct of the proceedings.

2. The presiding member shall set the time limits for the submission of pleadings and shall prescribe all the measures necessary for the conduct of the proceedings.

3. Certified copies of all documents submitted by either party shall be immediately forwarded to the other party through the Registrar.

### *Article 17*

The proceedings shall consist of two parts; written and oral. Oral proceedings may be dispensed with if both parties so request.

### *Article 18*

1. Written proceedings shall consist of a statement of the complainant's case, the defendant's answer and, unless the Tribunal directs otherwise, a reply and a rejoinder.

2. Counterclaims shall be permissible.

### *Article 19*

1. Oral proceedings shall consist of the complainant's argument, the defendant's argument and, unless the Tribunal directs otherwise, a reply and a rejoinder, as well as hearings of witnesses and experts.

2. The Tribunal shall have power to demand the production of evidence, documentary or other, to require the attendance of witnesses to testify, to request expert opinion, and to direct inquiries to be made.

3. In the event that a party does not produce evidence which in the opinion of the Tribunal is relevant to the issues before it and which such party possesses or is in a position to procure, the Tribunal shall proceed to give its decision notwithstanding the absence of such evidence.

4. The presiding member or any other member of the Tribunal may put questions to the parties, witnesses and experts.

5. A written record of the oral proceedings shall be kept and shall be signed by the presiding member and the Registrar.

### *Article 20*

All decisions of the Tribunal shall be based on the Convention, the present Charter and the related Conventions. The Tribunal shall, in the interpretation of such Conventions, apply the generally accepted rules of international law governing the interpretation of treaties.

### *Article 21*

1. The Tribunal shall decide by majority vote.

2. Judgments shall state the reasons on which they are based.

3. Judgments shall be signed by the presiding member and by the Registrar.

4. Judgments shall be final and not subject to appeal.

5. In the case of a difference of opinion as to the meaning or scope of a judgment, the Tribunal may construe it by an interpretative judgment, on the application of either party and after having heard both parties.

### *Article 22*

The revision of a judgment may not be requested of the Tribunal except upon the grounds of the discovery of a fact which is of such a nature as to exercise a decisive influence, and of which the Tribunal and the party requesting revision had been unaware before the pronouncement of the judgment, always provided that such ignorance was not due to negligence on the part of the party requesting the revision.

### *Article 23*

1. Unless the Tribunal directs otherwise, each party to proceedings before the Tribunal shall pay its own costs.

2. The Tribunal shall bear the costs in respect of witnesses whose attendance it has required and expert opinions and inquiries which it has ordered.

### *Article 24*

The Tribunal shall determine its own rules of procedure consistent with the present Charter.

## PART IV. — ADVISORY OPINIONS

### *Article 25*

1. The Tribunal may, at the joint request of the Governments of the Three Powers and of the Federal Government, give an advisory opinion on any matter arising out of the Convention or the present Charter or the related Conventions, with the exception of those questions with which it would not have been competent to deal if they had been referred to it in the form of a dispute.

2. The Tribunal may, at the request of an authority referred to in paragraph 2 of Article 9 of the present Charter or at the request of the presiding member of such an authority, give an advisory opinion on the competence of such authority.

3. Advisory opinions shall not be binding.

**THIS IS TO CERTIFY that all translations of the German, Czech and Italian originals contained in this volume are complete and correct.**

**Dr. Alexander Goepfert**
**Agent for the Principality of Liechtenstein**
**28 March 2002**

CASE CONCERNING CERTAIN PROPERTY

(LIECHTENSTEIN v. GERMANY)

# ANNEXES

# TO THE

# MEMORIAL OF THE PRINCIPALITY OF LIECHTENSTEIN

## VOLUME II

Annexes 18 to 32

28 MARCH 2002

## Annex 18

# TREATY ON THE FINAL SETTLEMENT WITH RESPECT TO GERMANY ("TWO-PLUS-FOUR-TREATY") OF 12 SEPTEMBER 1990

# Treaty on the Final Settlement with respect to Germany

# Traité portant règlement définitif concernant l'Allemagne

The Federal Republic of Germany,
the German Democratic Republic,
the French Republic,
the Union of Soviet Socialist Republics,
the United Kingdom of Great Britain and Northern Ireland
and the United States of America,

Conscious of the fact that their peoples have been living together in peace since 1945;

Mindful of the recent historic changes in Europe which make it possible to overcome the division of the continent;

Having regard to the rights and responsibilities of the Four Powers relating to Berlin and to Germany as a whole, and the corresponding wartime and post-war agreements and decisions of the Four Powers;

Resolved in accordance with their obligations under the Charter of the United Nations to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

Recalling the principles of the Final Act of the Conference on Security and Cooperation in Europe, signed in Helsinki;

Recognizing that those principles have laid firm foundations for the establishment of a just and lasting peaceful order in Europe;

Determined to take account of everyone's security interests;

Convinced of the need finally to overcome antagonism and to develop cooperation in Europe;

Confirming their readiness to reinforce security, in particular by adopting effective arms control, disarmament and confidence-building measures; their willingness not to regard each other as adversaries but to work for a relationship of trust and cooperation; and accordingly their readiness to consider positively setting up appropriate institutional arrangements within the framework of the Conference on Security and Cooperation in Europe;

Welcoming the fact that the German people, freely exercising their right of self-determination, have expressed their will to bring about the unity of Germany as a state so that they will be able to serve the peace of the world as an equal and sovereign partner in a united Europe;

La République fédérale d'Allemagne,
la République démocratique allemande,
les Etats-Unis d'Amérique,
la République française,
le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord
et l'Union des Républiques socialistes soviétiques

Conscients que leurs peuples vivent mutuellement en paix depuis 1945;

Ayant à l'esprit les changements historiques survenus récemment en Europe, qui permettent de surmonter la division du continent;

Prenant en considération les droits et responsabilités des Quatre Puissances relatifs à Berlin et à l'Allemagne dans son ensemble ainsi que les accords et décisions correspondants des Quatre Puissances au temps de la guerre et de l'après-guerre;

Résolus, conformément aux obligations qui leur incombent en vertu de la Charte des Nations Unies, à développer entre les nations des relations amicales fondées sur le respect du principe de l'égalité de droits des peuples et de leur droit à disposer d'eux-mêmes, et à prendre toutes autres mesures propres à consolider la paix du monde;

Rappelant les principes de l'Acte final de la Conférence sur la Sécurité et la Coopération en Europe, signé à Helsinki;

Reconnaissant que ces principes ont établi des bases solides pour l'édification d'un ordre de paix juste et durable en Europe;

Déterminés à tenir compte des intérêts de sécurité de chacun;

Convaincus de la nécessité de surmonter définitivement les antagonismes et de développer la coopération en Europe;

Confirmant leur disposition à renforcer la sécurité, en particulier en adoptant des mesures efficaces de contrôle des armements, de désarmement et de confiance; leur volonté de ne pas se considérer les uns les autres comme des adversaires mais d'œuvrer en faveur d'une relation de confiance et de coopération; et par conséquent leur disposition à envisager positivement la mise en place d'arrangements institutionnels appropriés dans le cadre de la Conférence sur la Sécurité et la Coopération en Europe;

Saluant le fait que le peuple allemand, exerçant librement son droit à l'autodétermination, a affirmé sa volonté d'établir l'unité étatique de l'Allemagne pour servir la paix du monde en tant que membre égal et souverain d'une Europe unie;

Convinced that the unification of Germany as a state with definitive borders is a significant contribution to peace and stability in Europe;

Intending to conclude the final settlement with respect to Germany;

Recognizing that thereby, and with the unification of Germany as a democratic and peaceful state, the rights and responsibilities of the Four Powers relating to Berlin and to Germany as a whole lose their function;

Represented by their Ministers for Foreign Affairs who, in accordance with the Ottawa Declaration of 13 February 1990, met in Bonn on 5 May 1990, in Berlin on 22 June 1990, in Paris on 17 July 1990 with the participation of the Minister for Foreign Affairs of the Republic of Poland, and in Moscow on 12 September 1990;

Have agreed as follows:

## Article 1

(1) The united Germany shall comprise the territory of the Federal Republic of Germany, the German Democratic Republic and the whole of Berlin. Its external borders shall be the borders of the Federal Republic of Germany and the German Democratic Republic and shall be definitive from the date on which the present Treaty comes into force. The confirmation of the definitive nature of the borders of the united Germany is an essential element of the peaceful order in Europe.

(2) The united Germany and the Republic of Poland shall confirm the existing border between them in a treaty that is binding under international law.

(3) The united Germany has no territorial claims whatsoever against other states and shall not assert any in the future.

(4) The Governments of the Federal Republic of Germany and the German Democratic Republic shall ensure that the constitution of the united Germany does not contain any provision incompatible with these principles. This applies accordingly to the provisions laid down in the preamble, the second sentence of Article 23, and Article 146 of the Basic Law for the Federal Republic of Germany.

(5) The Governments of the French Republic, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America take formal note of the corresponding commitments and declarations by the Governments of the Federal Republic of Germany and the German Democratic Republic and declare that their implementation will confirm the definitive nature of the united Germany's borders.

## Article 2

The Governments of the Federal Republic of Germany and the German Democratic Republic reaffirm their declarations that only peace will emanate from German soil. According to the constitution of the united Germany, acts tending to and undertaken with the intent to disturb the peaceful relations between nations, especially to prepare for aggressive war, are unconstitutional and a punishable offence. The Governments of the Federal Republic of Germany and the German Democratic Republic declare that the united Germany will never employ any of its weapons except in accordance with its constitution and the Charter of the United Nations.

Convaincus que l'unification de l'Allemagne en un Etat aux frontières définitives représente une contribution importante à la paix et à la stabilité en Europe;

Désireux de conclure le règlement définitif concernant l'Allemagne;

Reconnaissant que, par là et avec l'unification de l'Allemagne en tant qu'Etat démocratique et pacifique, les droits et responsabilités des Quatre Puissances relatifs à Berlin et à l'Allemagne dans son ensemble perdent leur fonction;

Représentés par leurs ministres des Affaires Etrangères qui, conformément à la déclaration adoptée à Ottawa le 13 février 1990, se sont réunis le 5 mai 1990 à Bonn, le 22 juin 1990 à Berlin, le 17 juillet 1990 à Paris avec la participation du ministre des Affaires Etrangères de la République de Pologne, et le 12 septembre 1990 à Moscou;

sont convenus de ce qui suit:

## Article 1er

1) L'Allemagne unie comprendra le territoire de la République fédérale d'Allemagne, de la République démocratique allemande et de l'ensemble de Berlin. Ses frontières extérieures seront les frontières de la République fédérale d'Allemagne et de la République démocratique allemande et seront définitives à partir de la date d'entrée en vigueur du présent Traité. La confirmation du caractère définitif des frontières de l'Allemagne unie constitue un élément essentiel de l'ordre de paix en Europe.

2) L'Allemagne unie et la République de Pologne confirmeront la frontière existante entre elles par un traité ayant force obligatoire en vertu du droit international.

3) L'Allemagne unie n'a aucune revendication territoriale quelle qu'elle soit envers d'autres Etats et n'en formulera pas à l'avenir.

4) Les gouvernements de la République fédérale d'Allemagne et de la République démocratique allemande feront en sorte que la constitution de l'Allemagne unie ne comporte aucune disposition incompatible avec ces principes. Cela vaut en conséquence pour les dispositions contenues dans le préambule, l'article 23, phrase 2 et l'article 146 de la Loi fondamentale de la République fédérale d'Allemagne.

5) Les gouvernements des Etats-Unis d'Amérique, de la République française, du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord et de l'Union des Républiques socialistes soviétiques prennent formellement acte des engagements et déclarations correspondants des gouvernements de la République fédérale d'Allemagne et de la République démocratique allemande, et déclarent que leur mise en œuvre confirmera le caractère définitif des frontières de l'Allemagne unie.

## Article 2

Les gouvernements de la République fédérale d'Allemagne et de la République démocratique allemande réaffirment leurs déclarations selon lesquelles seule la paix émanera du sol allemand. Selon la constitution de l'Allemagne unie, les actes susceptibles de troubler les relations pacifiques entre les nations ou entrepris dans cette intention, notamment en vue de préparer une guerre d'agression, sont anticonstitutionnels et constituent une infraction punissable. Les gouvernements de la République fédérale d'Allemagne et de la République démocratique allemande déclarent que l'Allemagne unie n'emploiera jamais aucune de ses armes que conformément à sa constitution et à la Charte des Nations Unies.

### Article 3

(1) The Governments of the Federal Republic of Germany and the German Democratic Republic reaffirm their renunciation of the manufacture and possession of and control over nuclear, biological and chemical weapons. They declare that the united Germany, too, will abide by these commitments. In particular, rights and obligations arising from the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968 will continue to apply to the united Germany.

(2) The Government of the Federal Republic of Germany, acting in full agreement with the Government of the German Democratic Republic, made the following statement on 30 August 1990 in Vienna at the Negotiations on Conventional Armed Forces in Europe:

> "The Government of the Federal Republic of Germany undertakes to reduce the personnel strength of the armed forces of the united Germany to 370,000 (ground, air and naval forces) within three to four years. This reduction will commence on the entry into force of the first CFE agreement. Within the scope of this overall ceiling no more than 345,000 will belong to the ground and air forces which, pursuant to the agreed mandate, alone are the subject of the Negotiations on Conventional Armed Forces in Europe. The Federal Government regards its commitment to reduce ground and air forces as a significant German contribution to the reduction of conventional armed forces in Europe. It assumes that in follow-on negotiations the other participants in the negotiations, too, will render their contribution to enhancing security and stability in Europe, including measures to limit personnel strengths."

The Government of the German Democratic Republic has expressly associated itself with this statement.

(3) The Governments of the French Republic, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America take note of these statements by the Governments of the Federal Republic of Germany and the German Democratic Republic.

### Article 4

(1) The Governments of the Federal Republic of Germany, the German Democratic Republic and the Union of Soviet Socialist Republics state that the united Germany and the Union of Soviet Socialist Republics will settle by treaty the conditions for and the duration of the presence of Soviet armed forces on the territory of the present German Democratic Republic and of Berlin, as well as the conduct of the withdrawal of these armed forces which will be completed by the end of 1994, in connection with the implementation of the undertaking of the Federal Republic of Germany and the German Democratic Republic referred to in paragraph 2 of Article 3 of the present Treaty.

(2) The Governments of the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America take note of this statement.

### Article 5

(1) Until the completion of the withdrawal of the Soviet armed forces from the territory of the present German Democratic Republic and of Berlin in accordance with Article 4 of the present Treaty, only German territorial defence units which are not integrated into the alliance structures to which German armed forces in the rest of German territory are assigned will be stationed in that territory as armed forces of the united Germany. During that

### Article 3

1) Les gouvernements de la République fédérale d'Allemagne et de la République démocratique allemande réaffirment leur renonciation à la fabrication, à la possession et au contrôle d'armes nucléaires, biologiques et chimiques. Ils déclarent que l'Allemagne unie respectera également ces engagements. En particulier les droits et obligations découlant du Traité du $1^{er}$ juillet 1968 sur la non-prolifération des armes nucléaires continueront à s'appliquer à l'Allemagne unie.

2) Le gouvernement de la République fédérale d'Allemagne, en plein accord avec le gouvernement de la République démocratique allemande, a déclaré à Vienne, le 30 août 1990, au cours des négociations sur les forces armées classiques en Europe, ce qui suit:

> «Le gouvernement de la République fédérale d'Allemagne s'engage à réduire dans un délai de trois à quatre ans le niveau des effectifs en personnels des forces armées de l'Allemagne unie à 370.000 (forces terrestres, aériennes et navales). Cette réduction commencera au moment de l'entrée en vigueur du premier traité FCE. Dans les limites de ce plafond global, un maximum de 345.000 hommes appartiendront aux forces terrestres et aériennes, qui, conformément au mandat agréé, sont seules l'objet des négociations sur les forces armées classiques en Europe. Le gouvernement fédéral considère son engagement de réduire les forces terrestres et aériennes comme une contribution allemande importante à la réduction des forces armées classiques en Europe. Il présume que dans les négociations de suivi les autres participants aux négociations contribueront également au renforcement de la sécurité et de la stabilité en Europe, y compris par des mesures de limitation des effectifs en personnels.»

Le gouvernement de la République démocratique allemande s'est expressément associé à cette déclaration.

3) Les gouvernements des Etats-Unis d'Amérique, de la République française, du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord et de l'Union des Républiques socialistes soviétiques prennent acte de ces déclarations des gouvernements de la République fédérale d'Allemagne et de la République démocratique allemande.

### Article 4

1) Les gouvernements de la République fédérale d'Allemagne, de la République démocratique allemande et de l'Union des Républiques socialistes soviétiques déclarent que l'Allemagne unie et l'Union des Républiques socialistes soviétiques régleront par traité les conditions et la durée de la présence des forces armées soviétiques sur le territoire de l'actuelle République démocratique allemande et de Berlin, ainsi que le déroulement du retrait de ces forces armées, qui devra être achevé à la fin de l'année 1994, en relation avec l'exécution de l'engagement des gouvernements de la République fédérale d'Allemagne et de la République démocratique allemande mentionné au paragraphe 2 de l'article 3 du présent Traité.

2) Les gouvernements des Etats-Unis d'Amérique, de la République française et du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord prennent acte de cette déclaration.

### Article 5

1) Jusqu'à l'achèvement du retrait des forces armées soviétiques du territoire de l'actuelle République démocratique allemande et de Berlin conformément à l'article 4 du présent Traité, seules seront stationnées sur ce territoire, en qualité de forces armées de l'Allemagne unie, des unités allemandes de défense territoriale qui ne sont pas intégrées aux structures d'alliance auxquelles les forces armées allemandes sont affectées sur le

period and subject to the provisions of paragraph 2 of this Article, armed forces of other states will not be stationed in that territory or carry out any other military activity there.

(2) For the duration of the presence of Soviet armed forces in the territory of the present German Democratic Republic and of Berlin, armed forces of the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America will, upon German request, remain stationed in Berlin by agreement to this effect between the Government of the united Germany and the Governments of the states concerned. The number of troops and the amount of equipment of all non-German armed forces stationed in Berlin will not be greater than at the time of signature of the present Treaty. New categories of weapons will not be introduced there by non-German armed forces. The Government of the united Germany will conclude with the Governments of those states which have armed forces stationed in Berlin treaties with conditions which are fair taking account of the relations existing with the states concerned.

(3) Following the completion of the withdrawal of the Soviet armed forces from the territory of the present German Democratic Republic and of Berlin, units of German armed forces assigned to military alliance structures in the same way as those in the rest of German territory may also be stationed in that part of Germany, but without nuclear weapon carriers. This does not apply to conventional weapon systems which may have other capabilities in addition to conventional ones but which in that part of Germany are equipped for a conventional role and designated only for such. Foreign armed forces and nuclear weapons or their carriers will not be stationed in that part of Germany or deployed there.

### Article 6

The right of the united Germany to belong to alliances, with all the rights and responsibilities arising therefrom, shall not be affected by the present Treaty.

### Article 7

(1) The French Republic, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America hereby terminate their rights and responsibilities relating to Berlin and to Germany as a whole. As a result, the corresponding, related quadripartite agreements, decisions and practices are terminated and all related Four Power institutions are dissolved.

(2) The united Germany shall have accordingly full sovereignty over its internal and external affairs.

### Article 8

(1) The present Treaty is subject to ratification or acceptance as soon as possible. On the German side it will be ratified by the united Germany. The Treaty will therefore apply to the united Germany.

(2) The instruments of ratification or acceptance shall be deposited with the Government of the united Germany. That Government shall inform the Governments of the other Contracting Parties of the deposit of each instrument of ratification or acceptance.

reste du territoire allemand. Pendant cette période et sous réserve des dispositions du paragraphe 2) du présent article, des forces armées d'autres Etats ne stationneront pas sur ce territoire et n'y mèneront aucune autre activité militaire.

2) Pendant la période de présence des forces armées soviétiques sur le territoire de l'actuelle République démocratique allemande et de Berlin, des forces armées des Etats-Unis d'Amérique, de la République française et du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord demeureront, sur demande de l'Allemagne unie, stationnées à Berlin, par accord à cet effet entre le gouvernement de l'Allemagne unie et les gouvernements des Etats concernés. Le niveau des effectifs et des armements de toutes les forces armées non allemandes stationnées à Berlin ne sera pas plus élevé qu'au moment de la signature du présent Traité. Les forces non allemandes n'y introduiront pas de nouvelles catégories d'armement. Le gouvernement de l'Allemagne unie conclura avec les gouvernements des Etats dont les forces armées stationnent à Berlin des accords établissant des conditions justes tenant compte des relations existantes avec les Etats concernés.

3) Après l'achèvement du retrait des forces armées soviétiques du territoire de l'actuelle République démocratique allemande et de Berlin, des unités des forces armées allemandes affectées aux structures d'alliance de la même manière que les unités stationnées sur le reste du territoire allemand pourront également stationner dans cette partie de l'Allemagne, bien que sans vecteurs d'armes nucléaires. Ceci ne s'applique pas aux systèmes d'armes classiques qui peuvent avoir d'autres capacités en sus de leur capacités classiques mais qui, dans cette partie de l'Allemagne, sont équipés à des fins classiques et affectés seulement à celles-ci. Des forces armées et des armes nucléaires ou des vecteurs d'armes nucléaires étrangers ne seront pas stationnés dans cette partie de l'Allemagne et n'y seront pas déployés.

### Article 6

Le droit de l'Allemagne unie d'appartenir à des alliances, avec tous les droits et obligations qui en découlent, n'est pas affecté par le présent Traité.

### Article 7

1) Les Etats-Unis d'Amérique, la République française, le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord et l'Union des Républiques socialistes soviétiques mettent fin par le présent Traité à leurs droits et responsabilités relatifs à Berlin et à l'Allemagne dans son ensemble. En conséquence, il est mis fin aux accords, décisions et pratiques quadripartites correspondants, qui s'y rattachent, et toutes les institutions des Quatre Puissances y afférentes sont dissoutes.

2) L'Allemagne unie jouira, en conséquence, de la pleine souveraineté sur ses affaires intérieures et extérieures.

### Article 8

1) Le présent Traité sera soumis à ratification ou acceptation aussitôt que possible. En ce qui concerne l'Allemagne, la ratification sera effectuée par l'Allemagne unie. Le Traité s'appliquera par conséquent à l'Allemagne unie.

2) Les instruments de ratification ou d'acceptation seront déposés auprès du gouvernement de l'Allemagne unie. Celui-ci informera les gouvernements des autres Parties contractantes du dépôt de chaque instrument de ratification ou d'acceptation.

### Article 9

The present Treaty shall enter into force for the united Germany, the French Republic, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America on the date of deposit of the last instrument of ratification or acceptance by these states.

### Article 10

The original of the present Treaty, of which the English, French, German and Russian texts are equally authentic, shall be deposited with the Government of the Federal Republic of Germany, which shall transmit certified true copies to the Governments of the other Contracting Parties.

In witness whereof, the undersigned plenipotentiaries, duly authorized thereto, have signed this Treaty.

Done at Moscow this twelfth day of September 1990.

### Article 9

Le présent Traité entrera en vigueur pour l'Allemagne unie, les Etats-Unis d'Amérique, la République française, le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord et l'Union des Républiques socialistes soviétiques le jour de dépôt du dernier instrument de ratification ou d'acceptation par ces Etats.

### Article 10

L'original du présent Traité dont les textes allemand, anglais, français et russe font également foi, est déposé auprès du gouvernement de la République fédérale d'Allemagne qui transmettra aux gouvernements des autres Parties contractantes des copies certifiées conformes.

En foi de quoi, les plénipotentiaires soussignés, dûment habilités à cet effet, ont signé le présent Traité.

Fait à Moscou, le 12 septembre 1990

For the Federal Republic of Germany
Pour la République fédérale d'Allemagne
Hans-Dietrich Genscher

For the German Democratic Republic
Pour la République démocratique allemande
Lothar de Maizière

For the French Republic
Pour la République française
Roland Dumas

For the Union of Soviet Socialist Republics
Pour l'Union des Républiques socialistes soviétiques
E. Schewardnadse

For the United Kingdom of Great Britain
and Northern Ireland
Pour le Royaume-Uni de Grande-Bretagne
et d'Irlande du Nord
Douglas Hurd

For the United States of America
Pour les Etats-Unis d'Amérique
James Baker

## Agreed Minute
## to the Treaty on the Final Settlement with respect to Germany
## of 12 September 1990

## Minute agréée
## au Traite portant règlement définitif concernant l'Allemagne signé
## le 12 septembre 1990

Any questions with respect to the application of the word "deployed" as used in the last sentence of paragraph 3 of Article 5 will be decided by the Government of the united Germany in a reasonable and responsible way taking into account the security interests of each Contracting Party as set forth in the preamble.

Toutes questions concernant l'application du mot «déployés» utilisé dans la dernière phrase de l'article 5, paragraphe 3, seront tranchées par le gouvernement de l'Allemagne unie d'une manière raisonnable et responsable prenant en compte les intérêts de sécurité de chaque partie contractante ainsi qu'il est affirmé dans le préambule.

For the Federal Republic of Germany
Pour la République fédérale d'Allemagne
Hans-Dietrich Genscher

For the German Democratic Republic
Pour la République démocratique allemande
Lothar de Maizière

For the French Republic
Pour la République française
Roland Dumas

For the Union of Soviet Socialist Republics
Pour l'Union des Républiques socialistes soviétiques
E. Schewardnadse

For the United Kingdom of Great Britain
and Northern Ireland
Pour le Royaume-Uni de Grande-Bretagne
et d'Irlande du Nord
Douglas Hurd

For the United States of America
Pour les Etats-Unis d'Amérique
James Baker

## Annex 19

### EXCHANGE OF NOTES CONSTITUTING AN AGREEMENT CONCERNING THE CONVENTION ON RELATIONS BETWEEN THE THREE POWERS AND THE FEDERAL REPUBLIC OF GERMANY OF 26 MAY 1952 AND THE CONVENTION ON THE SETTLEMENT OF MATTERS ARISING OUT OF THE WAR AND THE OCCUPATION OF 26 MAY 1952 OF 27 SEPTEMBER AND 28 SEPTEMBER

Der Staatssekretär
des Auswärtigen Amts
503-553.20

Bonn, 27 September 1990

Excellencies,

I have the honour to refer to the discussions which have taken place between representatives of the Governments of the Federal Republic of Germany, the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America, and on behalf of the Government of the Federal Republic of Germany to propose the following:

1. The Convention on Relations between the Three Powers and the Federal Republic of Germany of 26 May 1952 (as amended by Schedule I to the Protocol on the Termination of the Occupation Régime in the Federal Republic of Germany, signed at Paris on 23 October 1954) ("the Relations Convention") shall be suspended upon the suspension of the operation of quadripartite rights and responsibilities with respect to Berlin and to Germany as a whole, and shall terminate upon the entry into force of the Treaty on the Final Settlement with respect to Germany, signed at Moscow on 12 September 1990.

2. Subject to paragraph 3 below, the Convention on the Settlement of Matters Arising out of the War and the Occupation of 26 May 1952 (as amended by Schedule IV to the Protocol on the Termination of the Occupation Régime in the Federal Republic of Germany, signed at Paris on 23 October 1954) ("the Settlement Convention") shall be suspended and shall terminate at the same time as the Relations Convention; this also applies to the letters and exchanges of letters relating to the Relations Convention and the Settlement Convention.

3. The following provisions of the Settlement Convention shall, however, remain in force:

   Chapter One:

   - Article 1, paragraph 1, first sentence up to and including "... legislation enacted by the Occupation Authorities", and paragraphs 3, 4 and 5
   - Article 2, paragraph 1
   - Article 3, paragraphs 2 and 3
   - Article 5, paragraphs 1 and 3
   - Article 7, paragraph 1
   - Article 8

   Chapter Three:

   - Article 3, paragraph 5 (a) of the Annex
   - Article 6, paragraph 3 of the Annex

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Der Staatssekretär
des Auswärtigen Amts
503-553.20

Bonn, le 27 septembre 1990

Excellences,

Me référant aux entretiens qui ont eu lieu entre des représentants des Gouvernements de la République fédérale d'Allemagne, des Etats-Unis d'Amérique, de la République française et du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord, j'ai l'honneur de vous proposer ce qui suit au nom du Gouvernement de la République fédérale d'Allemagne:

1) La Convention sur les relations entre les trois Puissances et la République fédérale d'Allemagne en date du 26 mai 1952 (telle qu'amendée conformément à l'Annexe I du Protocole sur la cessation du régime d'occupation dans la République fédérale d'Allemagne, signé à Paris le 23 octobre 1954) (ci-après dénommée «la Convention sur les relations») sera suspendue au moment de la suspension de l'exercice des droits et responsabilités des Quatre Puissances en ce qui concerne Berlin et l'Allemagne dans son ensemble; elle cessera d'être en vigueur à la date d'entrée en vigueur du Traité portant règlement définitif concernant l'Allemagne, signé à Moscou, le 12 septembre 1990.

2) Sous réserve des dispositions du paragraphe 3 ci-dessous, la Convention sur le règlement de questions issues de la guerre et de l'occupation en date du 26 mai 1952 (telle qu'amendée conformément à l'Annexe IV du Protocole sur la cessation du régime d'occupation dans la République fédérale d'Allemagne, signé à Paris le 23 octobre 1954) (ci-après dénommée «la Convention sur le règlement») sera suspendue en même temps que la Convention sur les relations; elle cessera d'être en vigueur en même temps que celle-ci; il en sera de même pour les lettres et les échanges de lettres relatifs à la Convention sur les relations et à la Convention sur le règlement.

3) Les dispositions suivantes de la Convention sur le règlement demeureront cependant en vigueur:

   Chapitre Premier:

   - Article 1, paragraphe 1, première phrase jusques et y compris: «... la législation édictée par les Autorités d'Occupation»; paragraphes 3, 4 et 5;
   - Article 2, paragraphe 1;
   - Article 3, paragraphes 2 et 3;
   - Article 5, paragraphes 1 et 3;
   - Article 7, paragraphe 1;
   - Article 8;

   Chapitre Troisième:

   - Article 3, paragraphe 5 (a) de l'Annexe;
   - Article 6, paragraphe 3 de l'Annexe;

Chapter Six:
Article 3, paragraphs 1 and 3

Chapter Seven:
Article 1
Article 2

Chapter Nine:
Article 1

Chapter Ten:
Article 4

In addition, paragraph 7 of the letters of 23 October 1954 from the Federal Chancellor to each of the three High Commissioners relating to facilities for Embassies and Consulates, as well as the letters of 23 October 1954 in confirmation from the High Commissioners, shall remain in force.

4. (a) The Government of the Federal Republic of Germany declares that it shall take all adequate measures to ensure that the provisions of the Settlement Convention which remain in force shall not be circumvented in the territory of the present German Democratic Republic and in Berlin.

(b) With regard to Article 11 of Chapter One of the Settlement Convention:

The Government of the Federal Republic of Germany is aware of the continued existence of I.G. Farbenindustrie A.G. i.L. under the original name and shall use its best endeavours to achieve a satisfactory solution consistent with the objectives which were expressed in Article 11 of Chapter One.

(c) With regard to Chapters Three, Four and Five of the Settlement Convention:

The Government of the Federal Republic of Germany confirms that the deletion of Chapters Three, Four and Five shall not affect the continued application of the principles set forth therein in respect of internal restitution, compensation for victims of Nazi persecution and external restitution, as well as the continued application of the corresponding provisions of the Federal Restitution Law and the Federal Compensation Law. The compensation pensions awarded to the victims of Nazi persecution and to their descendants shall continue to be granted in accordance with the applicable provisions.

The Government of the Federal Republic of Germany shall ensure that upon suspension of the Settlement

Chapitre Sixième:
Article 3, paragraphes 1 et 3;

Chapitre Septième:
Article 1;
Article 2;

Chapitre Neuvième:
Article 1;

Chapitre Dixième:
Article 4.

En outre, le paragraphe 7 des lettres en date du 23 octobre 1954 adressées par le Chancelier fédéral à chacun des trois Hauts Commissaires au sujet des facilités pour les Ambassades et les Consulats, de même que les lettres du même jour des Hauts Commissaires accusant réception de ces lettres, demeureront en vigueur.

4) a) Le Gouvernement de la République fédérale d'Allemagne déclare qu'il prendra toutes les mesures appropriées en vue d'assurer que les dispositions de la Convention sur le règlement qui demeureront en vigueur ne soient pas contournées sur le territoire de ce qui constitue à ce jour la République démocratique allemande, ni à Berlin.

b) En ce qui concerne l'article 11 du Chapitre Premier de la Convention sur le règlement:

Le Gouvernement de la République fédérale d'Allemagne est conscient du fait que l'I.G. Farbenindustrie A.G. i.L. continue d'exister sous son nom d'origine; il fera tout ce qui est en son pouvoir pour parvenir à une solution satisfaisante conforme aux objectifs énoncés à l'article 11 du Chapitre Premier.

c) En ce qui concerne les Chapitres Troisième, Quatrième et Cinquième de la Convention sur le règlement:

Le Gouvernement de la République fédérale d'Allemagne confirme que la suppression des Chapitres Troisième, Quatrième et Cinquième n'affectera ni la poursuite de l'application des principes qui y sont établis en ce qui concerne les restitutions internes, l'indemnisation des victimes de la persécution nazie et les restitutions externes, ni la poursuite de l'application des dispositions correspondantes de la Loi fédérale sur les restitutions et de la Loi fédérale sur les indemnisations. Les pensions d'indemnisation attribuées aux victimes de la persécution nazie ainsi qu'à leurs ayants-droits continueront d'être accordées conformément aux dispositions applicables.

Le Gouvernement de la République fédérale d'Allemagne assure que les compétences de la Cour suprême

Convention the jurisdiction of the Supreme Restitution Court is transferred to German courts.

The Government of the Federal Republic of Germany states that the Federal Restitution Law and the Federal Compensation Law will be extended to the territory of the present German Democratic Republic. In this respect further provisions that take account of the conditions prevailing there are required.

(d) With regard to Chapter Nine of the Settlement Convention:

Articles 2 and 3 of Chapter Nine have not been retained on the assumption that all questions dealt with therein have been settled as far as the Parties to the Settlement Convention are concerned.

The Government of the Federal Republic of Germany has assumed the responsibility for the determination and satisfaction of any claims by persons subject to its jurisdiction which are referred to in Article 3 and which may still be asserted under German law.

If the Governments of the French Republic, the United Kingdom of Great Britain and Northern Ireland and the United States of America agree to the content of this Note, this Note and the Notes in reply thereto expressing your Governments' agreement shall constitute an Agreement between our four Governments, which shall enter into force upon receipt of the last reply expressing agreement. The Government of the Federal Republic of Germany shall inform the other Governments of the receipt of that last reply.

The English and French texts of this Note are attached hereto, all three texts being equally authentic.

Please accept, Excellencies, the assurance of my highest consideration.

H.E.
the Ambassador of the French Republic

H.E.
the Ambassador of the United Kingdom of Great Britain and Northern Ireland
H.E.
the Ambassador of the United States of America

Bonn

des Restitutions seront transférées aux tribunaux allemands au moment de la suspension de la Convention sur le règlement.

Le Gouvernement de la République fédérale d'Allemagne déclare que l'application de la Loi fédérale sur les restitutions et de la Loi fédérale sur les indemnisations sera étendue au territoire de ce qui constitue à ce jour la République démocratique allemande. A cet égard, il sera nécessaire de prévoir d'autres dispositions prenant en compte les conditions qui existent dans ce territoire.

d) En ce qui concerne le Chapitre Neuvième de la Convention sur le Règlement:

Les articles 2 et 3 du Chapitre Neuvième n'ont pas été maintenus en partant du principe que toutes les questions traitées dans ces articles ont été réglées dans la mesure où elles concernent les parties à la Convention.

Le Gouvernement de la République fédérale d'Allemagne a assumé la responsabilité en ce qui concerne la détermination et le règlement des demandes d'indemnisation visées à l'article 3 et pouvant encore être présentées conformément au droit allemand par des personnes soumises à sa juridiction.

Si les Gouvernements des Etats-Unis d'Amérique, de la République française et du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord sont d'accord avec le contenu de la présente lettre, celle-ci et les lettres en réponse exprimant l'accord de vos Gouvernements constitueront un accord entre nos quatre Gouvernements qui entrera en vigueur à la reception de la dernière réponse exprimant accord; le Gouvernement de la République fédérale d'Allemagne informera les autres Gouvernements de la reception de cette dernière réponse.

Les textes anglais et français de la présente lettre sont joints, les trois textes faisant également foi.

Veuillez agréer, Excellences, l'assurance de ma très haute considération.

S.E.
l'Ambassadeur des Etats-Unis d'Amérique

S.E.
l'Ambassadeur de la République française

S.E.
l'Ambassadeur du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord

Bonn

## Annex 20

# REPORT OF THE COMMITTEE OF THE FEDERAL PARLIAMENT FOR THE OCCUPATION STATUTE AND OTHER EXTERNAL AFFAIRS
## OF 16 MAY 1952

## Translation of the German Original

**of page 6, para. 3 of the Report of the Committee of the Federal Parliament (Bundestag) for the Occupation Statute and Other External Affairs of 16 May 1952**

The measures taken against the German external property taken during and after the **Second World War** are premature reparations. In international law the imposition of reparations is however only possible by means of a peace treaty. The measures against German property contravene the provisions of the Hague Convention IV Respecting the Laws and Customs of War on Land of 1907. The generally applicable principles of international law regarding the protection of external property are accompanied by protection provisions contained in bilateral agreements that Germany had concluded with a great number of states. This applies in particular to most neutral states, to a number of South-American states, and to the United States of America which a friendship, trade and consular agreement was concluded with in 1923; this agreement was a milestone in the development of American law with a view to the protection of property. It should be mentioned here that, according to the most recent case law of the Supreme Court of the United States, this agreement was not cancelled by the war. In addition, the Allies concluded their agreements on the German external assets as "representatives of Germany", so to speak with themselves and in their own behalf, and thus violated the prohibition of self-contracting, which is recognised also under international law. In comparison to the period following the First World War, the violation of international law was increased and extended after the Second World War insofar as now for the first time and without a historic precedent, also external assets located in the neutral states were claimed as reparations by the victorious powers. The contravention of the basic principle of international law that reparations have to be made by the defeated country and not from a group of its nationals chosen at random, has been carried out to the full extent.

## Annex 21

# STATEMENT OF THE SECRETARY OF STATE OF THE GERMAN FEDERAL MINISTRY OF FINANCE OF 22 FEBRUARY 1951

**Translation of the German Original**

**of page 4582, second column, paras. 5, 6 of the Statement of the Secretary of State of the German Federal Ministry of Finance of 22 February 1951**

With a view to the third question, reference is to be made to the provisions of sec. 21 (1) no. 3 of the Act on the Validation of Securities (*Wertpapierbereinigungsgesetz*), as the interpellator has already done. Transfer of property after 1 January 1945 because of measures of the 'High Hand' shall only be recognised if these are legally effective measures of the authorities or the occupying powers of the currency area. Other measures of the 'High Hand', that is to say of authorities and occupying powers outside the currency area, shall not be recognised. Accordingly the registrations of the Czechoslovakian state inasmuch as they contain expropriated securities of Sudeten German owners, will have to be refused. Corresponding decisions made be the Chambers for the Validation of Securities are already available and will be published in the specialist press. We thus had a corresponding notice e.g. in the "Frankfurter Allgemeinen Zeitung" of 26 January 1951. It does not seem necessary to take any further steps, as it can by assumed that the Courts will continue to reject the applications of the Czechoslovakian state on the basis of the clear legal provisions.

The legal situation is just the same regarding the expropriations made in the Eastern Zone. All authorities being involved in the validation of securities are informed about the situation in the Eastern Zone. It is thus to be expected that the expropriations can be established and that the Chambers for Securities Matters will continue to decide in favour of the parties truly entitled.

## Annex 22

# EXPLANATORY MEMORANDUM OF THE FEDERAL GOVERNMENT OF GERMANY TO THE SETTLEMENT CONVENTION OF 21 JULY 1952

## Translation of the German Original

of Part six (pages 54, 55, 56) of the Memorandum of the Federal Government to the Settlement Convention of 21 July 1952

### PART SIX

### Reparations

As in the peace treaties which terminated the First World War, the victorious powers of the Second World War have, in the peace treaties of which six have so far been concluded, also had recourse to the private external assets of the conquered states which were located on their territory for the purposes of reparation. The same has been agreed by the big powers with respect to Germany in the Potsdam Agreement. The Control Council Ordinance No. 5 and AHC Law No. 63 were adopted for the purpose of implementing these agreements and 19 Allied countries concluded the Paris Inter-Allied Reparation Agreement of 14 January 1946.

The use of German external assets for the purposes of reparation on the basis of international agreements and laws of the occupying powers had to be accepted as a hard fact. It was a matter of relaxing these international agreements and laws where possible. This ought to have been for the most part achieved.

First, the effect of the Control Council Ordinance No. 5 was limited (Article 2); then, the way was paved for extensive bilateral negotiations with the individual states entitled to reparations. With those former enemies of Germany that are not parties to the Inter-Allied Agreement, agreements can be entered into regarding both liquidations not yet carried out and earnings from liquidations not used yet (Article 4 para. (1)). The same extent of negotiations could not be achieved with a view to the parties to the Reparation Agreement, as the Allied powers relied on their contractual duties. But also with the parties to the Reparation Agreement, negotiations were admitted regarding a final date for the confiscation of German property and regarding old-age pensions that went beyond the rules for set-off applicable up to then (Article 4 para. (2)). Finally, the agreement to a General Clause was achieved, on the basis of which the Federal Republic is free to conclude agreements with all states on all questions regarding the German external properties, provided that the Three Powers do not expressly object (Article 4 para. (4)). The area of reparations, up to then completely reserved to the occupying powers according to the occupation statute, thus is now withdrawn from their exclusive competence; the regulation of reparations is in part left to free agreements to be concluded between the Federal Republic and other states; in part, such agreements are subject only to an express and unanimous objection of the Three Powers, which is most unlikely to be made use of in future.

It is most questionable and regrettable that the victorious powers of the Second World War also claimed German assets located in neutral states, that they divided, in the Potsdam Agreement, also the German property located in Austria among the Soviet Union and the Western Powers and subjected also the embassy buildings, the trademarks and other items to liquidation. But also in this connection, there is the possibility to conduct negotiations with the Powers involved; such negotiations have already been successfully initiated with Switzerland. One can only hope that favourable agreements can be obtained also regarding trademarks, for which already the rules for set-off contained in the Reparation Agreement provide certain possibilities.

The principle of compensation to be paid to the owners affected by liquidation measures is expressly recognised in the Agreement (Article 5). Deviating from the treaties concluded with the Three Powers, agreements on the reparation questions are admitted for the neutral states that allow regulating the type and extent of compensation in accordance with the Basic Law of the Federal Republic and the German financial capabilities (Article 4 para. (3)).

The recognition of the inter-allied treaties and the laws of the occupying powers was avoided in the Convention. The Federal Republic merely stated that it would not in the future raise any objections against expropriation measures (Article 3 para. 1). Herein lies a clear reference to the legal reservation previously asserted and only a dispensation with its future reuse, in any case no recognition of the measures carried out. The legal reservation can continue to be asserted vis-à-vis the neutral states.

The definitive and formal solution to the reparation issue, with a view to the relation between the Three Western Powers and the Soviet Union, had to remain reserved to a peace treaty between the reunified Germany and its former ennemies, a peace treaty that, as is expressly stated, must be freely agreed upon. It is of decisive importance, however, that the Federal Government may, on the basis of that part's provisions, conclude bilateral agreements on the solution of the reparation issue with all states entitled to reparations even before a regulation by way of a peace treaty. In addition, the Three Western Powers undertook not to claim reparation payments out of the current production of the Federal Republic, neither before the conclusion of a peace treaty nor in such treaty itself (Article 1 para. (1)).

It cannot be denied that the loss of the German external property is most painful; the definitive extent of those losses will depend on the bilateral negotiations. The more the insight is spread abroad that the measures taken against German private property were inadmissible, the more favourable the prospects of such negotiations can be judged. The acts and proclamations issued by the Allies regarding the end of the state of war with Germany have made impossible any further legal interference with German private assets, and the legal principle, normal in a state of peace, of respect and recognition of the private property is now ensured once again. As any payments from the current production are out of the question now, the reparation issue of the Second World War should be deemed to be practically finalised, an issue that after the First World War had burdened the political and economic relations among all states until 1932. Besides the two major German liabilities, which the Allied Powers themselves are most interested in, i.e. the liabilities from private debt dating from before and after the war (plus claims asserted by Israel), on the one hand, and the defence contribution, on the other hand, there is no more space for reparations for the period of the war.

## Annex 23

# STATEMENT OF THE COMMITTEE FOR LEGAL ISSUES AND CONSTITUTIONAL LAW IN THE WRITTEN REPORT ON THE SETTLEMENT CONVENTION OF 15 NOVEMBER 1952

Translation of the German Original

of page 37, section 3 of the Statement of the German Committee for Legal I
Constitutional Law in the written report on the Settlement Conventi
November 1952

**3. Expropriation of external assets**

The opposition is of the opinion that the provisions regarding external ass
compatible with Article 14 of the Basic Law, because the compensation for
affected is not regulated in detail in the very bill requiring *Bundesrat* ap
contrast, the majority of the Legal Committee has taken the view
expropriation of external assets is not a German sovereign act but an A
which the Basic Law is not applicable to. The Federal Government does not
the validity of the expropriations. According to information from the r
[Note of the translator: of the convention], this is exactly why wording
agreed on to the effect that no objections are to be raised against the allied
affecting property already confiscated. In this context, claims relating to
the past are not to be admitted in the contracting states. However, this
constitute a **legal recognition of the expropriation**. The waiver to take le
does not go beyond the acceptance of the legal state that the Allies h
unilaterally, because actions were inadmissible also under former law and
of the law forming the basis for the action exactly has not been declare
contrary, the maintenance of material law forms the basis for the possibilit
now of negotiations with all states involved. It must be admitted that fo
who is not familiar with the way of thinking usual in international law it is
understand the distinction between actual acceptance and legal recogni
however, is a fundamental figure for understanding the Treaties. It was t
Government's task to take the place of the occupation statute. In many
could be done only in such a way that the Allies insisted on the factua
created by way of the policy during the previous years, and the Federal G
was restricted to the task of achieving at least a mitigation of the former
This obviously did not mean that the accepted factual situation was rec

being lawful in the full sense of the word. At least, however, the tension between law and reality had to be attenuated. In international law, the **system of legal protection** is not fully developed. Thus, contraventions to international law are often accepted as a matter of fact, because there is no instance that could annul the prohibited fact. This is the core of the *de facto* doctrine, which has its effects also here. Accordingly, if the Federal Government does not legally recognise the expropriations made by the Allies, the **compensation for the parties affected** is not required immediately by the Basic Law, although it seems to be correct, of course, to allocate the parties affected a compensation in analogous application of the Basic Law. However, such compensation, which the Federal Government has expressly undertaken to pay, does not need to be included into the Ratification Act itself. A *spatium modicum* seems to be even more urgently required as presently no sufficient overview of the extent of the lost external property has been obtained yet and the just balancing of the compensation claims arising here with those of the expellees and bomb victims cannot be made yet.

## Annex 24

# TREATY ON MUTUAL RELATIONS BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE CZECHOSLOVAK SOCIALIST REPUBLIC OF 11 DECEMBER 1973

# No. 13589

# FEDERAL REPUBLIC OF GERMANY
and
CZECHOSLOVAKIA

## Treaty on mutual relations (with exchange of letters and related letter). Signed at Prague on 11 December 1973

*Authentic texts: German and Czech.*

*Registered by the Federal Republic of Germany on 21 October 1974.*

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# RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
TCHÉCOSLOVAQUIE

## Traité sur les relations mutuelles (avec échange de lettres et lettre connexe). Signé à Prague le 11 décembre 1973

*Textes authentiques : allemand et tchèque.*

*Enregistré par la République fédérale d'Allemagne le 21 octobre 1974.*

[TRANSLATION — TRADUCTION]

# TREATY[1] ON MUTUAL RELATIONS BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE CZECHOSLOVAK SOCIALIST REPUBLIC

The Federal Republic of Germany and the Czechoslovak Socialist Republic,

Recognizing, in the light of history, that harmonious coexistence of the peoples of Europe is a prerequisite of peace,

Being firmly resolved, in their relations, to have done once for all with the pernicious past, especially in connexion with the Second World War, which caused incalculable suffering to the peoples of Europe,

Recognizing that the Munich Agreement of 29 September 1938 was imposed on the Czechoslovak Republic by the national socialist régime under the threat of force,

Considering that in both countries there has grown up a new generation which is entitled to an assured peaceful future,

Purposing to create lasting foundations for the development of good-neighbourly relations,

Desiring to consolidate peace and security in Europe,

Being convinced that peaceful co-operation on the basis of the purposes and principles of the Charter of the United Nations conforms to the wishes of peoples and is in the interests of world peace.

Have agreed as follows:

*Article I.* The Federal Republic of Germany and the Czechoslovak Socialist Republic consider the Munich Agreement of 29 September 1938 void as regards their mutual relations under this Treaty.

*Article II.* (1) This Treaty shall not affect legal consequences deriving, in respect of natural or artificial persons, from the law applied in the period from 30 September 1938 to 9 May 1945.

There shall be excluded from the foregoing the consequences of measures which both Contracting Parties consider void by reason of their incompatibility with the fundamental principles of justice.

(2) This Treaty shall not affect the nationality of persons, living or dead, deriving from the legal order of either Contracting Party.

(3) This Treaty shall not, by virtue of its declarations concerning the Munich Agreement, constitute a legal basis for material claims by the Czechoslovak Socialist Republic or its natural or artificial persons.

*Article III.* (1) The Federal Republic of Germany and the Czechoslovak Socialist Republic shall be guided in their mutual relations, and in matters relating to the preservation of security in Europe and in the world, by the principles and purposes set forth in the Charter of the United Nations.

---

[1] Came into force on 19 July 1974 by the exchange of the instruments of ratification, which took place at Bonn, in accordance with article VI.

(2) They shall accordingly, in conformity with Articles 1 and 2 of the Charter of the United Nations, settle all their disputes exclusively by peaceful means and refrain, in matters affecting European and world security and in their mutual relations, from the threat or use of force.

*Article IV.* (1) In accordance with the aforementioned purposes and principles, the Federal Republic of Germany and the Czechoslovak Socialist Republic affirm the inviolability of their common frontier now and in the future and mutually pledge to each other unqualified respect for their territorial integrity.

(2) They declare that they have no territorial claims of any kind against each other and that they will not raise any such claims in the future.

*Article V.* (1) The Federal Republic of Germany and the Czechoslovak Socialist Republic shall take further steps with a view to the comprehensive development of their mutual relations.

(2) They agree that it is in their mutual interest to expand their neighbourly co-operation in economic matters, science, technical scientific relations, culture, environmental protection, sport, transport and other aspects of their relations.

*Article VI.* This Treaty shall be ratified and shall enter into force on the date of the exchange of instruments of ratification, which shall take place at Bonn.

IN WITNESS WHEREOF the plenipotentiaries of the Contracting Parties have signed this Treaty.

DONE at Prague on 11 December 1973 in two original copies, each in the German and Czech languages, both texts being equally authentic.

For the Federal Republic of Germany:

WILLY BRANDT
WALTER SCHEEL

For the Czechoslovak Socialist Republic:

STROUGAL
B. CHŇOUPEK

## EXCHANGE OF LETTERS

### I*a*

Sir,

I have the honour, on behalf of the Government of the Federal Republic of Germany, to confirm the agreement reached during the negotiations that the application of article II of the Treaty on mutual relations between the Federal Republic of Germany and the Czechoslovak Socialist Republic signed this day shall, in conformity with the Quadripartite Agreement of 3 September 1971,[1] be extended to Berlin (West) in accordance with established procedures.

---

[1] United Nations, *Treaty Series*, vol. 880, No. I-12621.

The Federal Republic of Germany and the Czechoslovak Socialist Republic contemplate agreeing in each specific case on the extension to Berlin (West) in accordance with established procedures, in conformity with the Quadripartite Agreement of 3 September 1971, of treaties resulting from the implementation of article V of this Treaty.

I would request you to confirm your agreement with the foregoing.

Accept, Sir, etc.

WALTER SCHEEL

Mr. Bohuslav Chňoupek
Minister for Foreign Affairs
of the Czechoslovak Socialist Republic

### II*a*

Sir,

I have the honour, on behalf of the Government of the Czechoslovak Socialist Republic, to acknowledge receipt of your letter of today's date, reading as follows:

[*See letter Ia*]

The Government of the Czechoslovak Socialist Republic agrees with the foregoing.

Accept, Sir, etc.

B. CHŇOUPEK

Mr. Walter Scheel
Federal Minister for Foreign Affairs
of the Federal Republic of Germany

### I*b*

Sir,

In connexion with the signing this day of the Treaty on mutual relations between the Federal Republic of Germany and the Czechoslovak Socialist Republic, I have the honour to inform you, with reference to article V of the said Treaty, that during the negotiations on the Treaty, agreement was reached on the following questions:

1. In the framework of their endeavours to develop mutual relations, the Government of the Federal Republic of Germany and the Government of the Czechoslovak Socialist Republic will devote attention to humanitarian questions.

2. The Czechoslovak side has declared that the competent Czechoslovak authorities will give sympathetic consideration, in conformity with the laws and regulations in force in the Czechoslovak Socialist Republic, to applications by Czechoslovak citizens desiring by reason of their German nationality to emigrate to the Federal Republic of Germany.

The German side has declared that, in accordance with the laws and regulations in force in the Federal Republic of Germany, persons of Czech or Slovak nationality desiring to do so may emigrate to the Czechoslovak Socialist Republic.

3. There are no objections on the part of the two Governments to the German Red Cross and the Czechoslovak Red Cross assisting in the solution of the aforementioned questions.

4. Both Governments will further develop travel between the two countries, including visits between relatives.

5. Both Governments will explore possibilities for technical improvements in connexion with travel, including expeditious clearance at frontier crossing points and the opening of additional frontier crossing points.

6. The contents of this exchange of letters shall, in conformity with the Quadripartite Agreement of 3 September 1971, be applied *mutatis mutandis* to Berlin (West) in accordance with established procedures.

I would request you to confirm the contents of this letter.

Accept, Sir, etc.

WALTER SCHEEL

Mr. Bohuslav Chňoupek
Minister for Foreign Affairs,
of the Czechoslovak Socialist Republic

## II*b*

Sir,

I have the honour, on behalf of the Government of the Czechoslovak Socialist Republic, to acknowledge receipt of your letter of today's date, reading as follows:

[*See letter Ib*]

The Government of the Czechoslovak Socialist Republic agrees with the foregoing.

Accept, Sir, etc.

B. CHŇOUPEK

Mr. Walter Scheel
Federal Minister for Foreign Affairs
of the Federal Republic of Germany

## RELATED LETTER

Sir,

On the occasion of the signing this day of the Treaty on mutual relations, between the Czechoslovak Socialist Republic and the Federal Republic of Germany, I have the honour, on behalf of the Government of the Czechoslovak Socialist Republic, to inform you of the following:

As regards criminal acts committed in the years 1938 to 1945, under current Czechoslovak law charges can now be brought only in respect of any such acts which are punishable under Czechoslovak criminal law, for which the death penalty is prescribed by law and which, in addition, have the characteristics of war crimes or crimes against humanity

**within the meaning of article 6 (*b*) and (*c*) of the Charter of the International Military Tribunal at Nuremberg. There is no statutory limitation on criminal prosecution for such acts.**

**In all other cases, the time-limit for criminal prosecution expired at the latest in 1965. This situation will be in no way affected by the present Treaty.**

Accept, Sir, etc.

**B. Chnoupek**

**Mr. Walter Scheel**
**Federal Minister for Foreign Affairs**
**of the Federal Republic of Germany**

## Annex 25

# STATEMENT OF DEFENSE OF THE FEDERAL REPUBLIC OF GERMANY IN PROCEEDINGS BEFORE THE ADMINISTRATIVE COURT OF BERLIN, KRETSCHMER ./. FEDERAL REPUBLIC OF GERMANY OF 25 JUNE 2001 (REF. NO. VG 1 A 261.00)

## Translation of the German Original

of page 3 and 4, paras. 3, 4, 5 of the Statement of defense of the Federal Republic of Germany in proceedings before the administrative court of Berlin, Kretschmer ./. Federal Republic of Germany, of 25 June 2001

3. The defendant has, however, given important and plausible considerations as reasons for its decision to nevertheless refrain from taking steps vis-à-vis the Czech Republic beyond the continued observation of the political situation in order to protect the plaintiff's property (even less such steps that have a sanction character).

Particularly in the relation to our neighbours in Eastern Central Europe, especially to the Republic of Poland and the Czech Republic, where the expulsion of the Germans was extensively put under a taboo until the collapse of the communist system in 1989, a new perspective has been opened in dealing with the common history by way of open cooperation, e.g. among historians.

At the same time, the present government of the defendant is of the opinion (as was its predecessor) that the relations of the Federal Republic of Germany to its neighbours in Eastern Central Europe should not be burdened with political and legal questions originating from the past, but should be focussed on the future with a view to peace and stability in Europe (*inter alia*, extension of the EU to the east). This is in one line with the *German-Czech Declaration on the mutual relations and their future development* of 1997,

**Annex B1,**

in Item IV of which either side declared then that it respected that the other side had another view of the law. This is the same spirit in which also the talks of the Federal Chancellor with the Czech Prime Minister Zeman should be understood, in which neither a waiver nor a set-up were declared. The German legal view is still valid and has not been changed.

Irrespective of the more than doubtful prospects of success of a diplomatic advance, such as the plaintiff requires, this would heavily burden for years the German-Czech relations, which are just normalising. A future amicable overall solution would be made more difficult or even absolutely impossible.

4. The defendant expressly advocates the admission of the Czech Republic to the European Union, being convinced that this is in the common interest of both states. It deems this to be a chance to finally unite our continent in peace. The admission of the young democracies in Central and Eastern Europe to the EU is in Germany's interest in peace and stability in Europe.

In contrast to the plaintiff, the defendant therefore does not consider the negotiations being conducted with the Czech Republic on EU accession to offer an appropriate occasion or framework for making bilateral issues of the German-Czech relations a subject of discussion. Such attempts to abuse the accession negotiations as a means for exerting pressure in order to resolve bilateral questions and to enforce alleged national interests would not only cause considerable damage to the process of European integration but also impair the reputation and credibility of Germany, which would meet, and rightly so, with the other EU member states' lack of understanding.

5. Therefore, the Federal Government and, thus, the defendant do not intend to make the questions raised by the action of the relations to the Czech Republic a subject of discussion. Certainly, the defendant will continue to observe the political development in the Czech Republic, but, for the reasons mentioned, does not deem appropriate from a foreign policy point of view to deal with these facts and legal questions of the relations to the Czech Republic, taking into account the state of bilateral relations.

The interests of an individual – the plaintiff – or those of a group of persons would precede the political general interests of the state, which are to be protected by the Federal Government, in an inappropriate manner in case the appeal to a duty of the state to protect the individuals could be used to force improvements of individual positions to the detriment of the community by means chosen by the plaintiff (Collection of the Decisions of the Federal Constitutional Court (*BVerfGE*), *40, 141, 178*).

## Annex 26

# STATEMENT OF THE GERMAN GOVERNMENT CONCERNING T PRAGUE TREATY OF 11 JUNE 1974

**Translation of the German Original**

of section III, para. 11 (page 4) of the Statement of the German Government concerning the Prague Treaty of 11 June 1974

The German Government made clear, that this issue package was not part of the negotiations, that the Treaty is not a peace treaty, but a Treaty on the normalisation of relations, in which reparations and the Sudeten-German assets have not been negotiated on.

## Annex 27

## DECISION OF THE FEDERAL CONSTITUTIONAL COURT OF GERMA
## 25 JANUARY 1977 (REF. NO. 1 BVR 210, 221, 222, 248, 301/74)

## Translation of the German Original

of page 209, 210, paras. 2. and 3. of the Decision of the Federal Constitutional Court of 25 January 1977

2. The conclusion of the German-Czechoslovakian Agreement cannot be construed as an acceptance by the Federal Government of the Czechoslovakian confiscation measures. The agreement itself does not contain any provision that is even remotely concerned with issues of German private assets. Upon conclusion of the agreement, the Federal Government did not issue any manifestation of intent with reference to the confiscation measures taken by the Czechoslovakian authorities and, in particular, did not express any approval or recognition of these measures.

3. The agreement cannot be credited with having caused in any way a change of the property law situation to the detriment of the applicants. At the same time, it can remain open whether the German-Czechoslovakian agreement has brought about a change in the national and international status of the Sudeten territories within the meaning of the argument of the applicants. In any case, there has been no subsequent legalisation of the Czechoslovakian confiscation measures directed against the real property of the applicants in connection with the agreement. Nor does the agreement contain a provision that could be understood as a waiver of the assertion of possible claims resulting out of this. Inasmuch, therefore, as the applicants upon conclusion of the agreement are still entitled to ownership rights or claims of restitution and compensation with respect to their assets, the legal situation has not changed as a result of the conclusion of the agreement.

## Annex 28

# DECISION OF THE REGIONAL COURT OF COLOGNE OF 10 OCTOBER 1995 (REF. NO. 5 O 182/92)

Translation of the German Original

(stamp:)
(printing illegible)
(in handwriting:)
20.11.95
13.11.95

(initial, illegible)

Text/BrK

(Coat of arms)

# *LANDGERICHT KÖLN*

(Regional Court Cologne)

## IN THE NAME OF THE PEOPLE

## JUDGMENT

5 0 182/92

Pronounced on October 10 1995
Leithoff, *Justizangestellte*(court clerk)
as Registrar of the Court's Registry

In the lawsuit

**His Serene Reigning Highness Prince Hans Adam II of Liechtenstein**,
Vaduz Castle, FL-9490 Vaduz

Plaintiff;

- Authorised legal representatives: *Rechtsanwälte* (Lawyers) Dr. Kraneis pp.,
Hansaring 63-67, 50670 Köln

versus

the **Municipality of Cologne**, represented by the *Oberstadtdirektor* (chief administrative officer of the city), Town Hall, 50670 Köln

Defendant,

- Authorised legal representatives: *Rechtsanwälte* (Lawyers) Dr. Oppenhoff et al,
Hohenstaufenring 62, 50670 Köln -

Intervening third party: Historical Monuments Office in Brno, Radnicka 2,
60154 Brno, Czech Republic

- Authorised legal representatives: *Rechtsanwälte* (Lawyers) Uhlenbruch, Bartholomé
and Dell, Beethovenstraße 8,
50674 Köln -

following the oral hearing on July 11 1995,
the *5. Zivilkammer des Landgerichts Köln* (5th Section for Civil Matters of the Regional Court Cologne)
by the
presiding judge of the Regional Court Dr. Feuerherdt and the
judges of the Regional Court Becker and Dr. Schmidt

**the Court held that:**

The case is dismissed.

The costs of the proceedings and the extra-judicial costs of the intervening third party shall be recoverable from the Plaintiff.

The judgment is provisionally enforceable on security at an amount of DM 9,000.00 for each party.
The security may be provided by way of an unconditional and indefinite guarantee to be assumed by a credit institution authorised as customs and tax guarantor.

## STATEMENT OF THE FACTS:

The Plaintiff is the heir of his father, the former Prince of Liechtenstein. Until the end of 1944, his father was the owner of the painting in dispute by Peter van Laer "*Der große Kalkofen*" that had at least been part of the Liechtenstein family's collection since 1767. At the end of World war II, the painting was to be found in one of the castles of the Liechtenstein family in today's Czech Republic. After the end of the war, the Plaintiff's father considered the painting to be missing. In 1991, the Defendant received the painting from the intervening party as a loan for an exhibition. By virtue of an interlocutory injunction of the Court's Section dated November 11 1991, sequestration of the painting was effected on December 17 1991.

claims that the painting had not been the object of expropriation measures in Czechoslovakia, and in any case, such measures were invalid or insignificant on the grounds that they represented a violation of the *ordre public* of the Federal Republic of Germany.

The Plaintiff files the motion that

> the Defendant should be ordered to return to him the painting by Pieter van Laer entitled "*Szene um einen römischen Kalkofen*" (dimensions 51.5 cm X 69.2 cm), by declaring his consent that the above-mentioned painting be handed over to the Plaintiff from the custody of the *Obergerichtsvollzieher* (senior bailiff) Kramer in his capacity as sequestrator, and by releasing the painting in this respect.

The Defendant and the party intervening in his support file the motion that

> the case be dismissed.

The Defendant argues that the Plaintiff's father had lost his ownership of the painting as a result of expropriation effected in Czechoslovakia.

The party intervening in support of the Defendant submits in this respect that the painting in dispute was expropriated by the 12th Presidential Decree dated June 21 1945. The legality of such expropriation was constituted by judgment of the Administrative Court Bratislava on November 21 1951.

**STATEMENT OF REASONS ON WHICH THE DECISION IS BASED:**

I.

The claim is inadmissible, recourse to German courts is precluded.

1. However, Article 3 of the Allied High Commission Law No. 63 dated August 31 1951 (*ABlAHK - Amtsblatt der Alliierten Hohen Kommission* - page 1107) which clarified the legal situation with respect to German external assets and other property concerned by reparation or restitution (Allied High Commission Law No. 63), does not prevent the admissibility of the plaintiff's action any more. Together with all other provisions of occupation law, this regulation was rescinded by the "2+4 Treaty" (*BGBl. - Bundesgesetzblatt* (Federal Law Gazette) - 1990 II, 1318).

2. a) However, a regulation that is parallel to Article 3 Allied High Commission Law No. 63 can be found in Article 3 of Chapter Six of the Convention on the Settlement of Matters Arising out of the War and the Occupation (Settlement Convention) dated October 23 1954 (*BGBl.* 1955 II, 405, 439 *et seq*). This regulation reads as follows:

> " (1) The Federal Republic of Germany shall in the future raise no objections against the measures which have been, or will be, carried out with regard to German external assets or other property, seized for the purpose of reparation or restitution , or as a result of the state of war, or on the basis of agreements concluded, or to be concluded, by the Three Powers with other Allied countries , neutral countries or former allies of Germany.

> (2) ...
>
> (3) No claim or action shall be admissible against persons who shall have acquired or transferred title to property on the basis of the measures referred to in paragraph 1 and 2 of this Article, or against international organizations, foreign governments or persons who have acted upon instructions of such organizations or governments."

With regard to its paragraphs 1 and 3, this regulation is still in force today. Even though it is true that in the context of German reunification the Settlement Convention was rescinded by the agreement dated September 27/28 1990 with respect to the Relations Convention and the Settlement Convention (*BGBl* 1990 II, 138 *et seqq*). Pursuant to this agreement, however, the Articles 3 paragraph 1 and 3 of Chapter Six Settlement Convention *inter alia* shall remain in force.

In accordance with Article 3 paragraph 3 of Chapter Six Settlement Convention, German jurisdiction is precluded in the case at hand. In general opinion, this regulation represents a preclusion of German jurisdiction in the cases specified therein. (*BGHZ - Entscheidungssammlung des Bundesgerichtshofs in Zivilsachen* - 32, 170, 172; Soergel/Kegel, before Art. 7 marginal note 89 with further references).

b) The prerequisites of Article 3 paragraph 3 of Chapter Six Settlement Convention are complied with.

aa) In accordance with the wording of this provision, however, - and to the extent that it is of interest in the case at hand - this provision is restricted in its scope of application in that "no claim or action shall be admissible against persons who shall have acquired or transferred title to property". Strictly speaking, the

Defendant as a legal person does not meet this requirement, because the Defendant was given the painting in form of a loan, which means that he did neither acquire ownership of nor transfer title to it. Nonetheless, the respective provision of Article 3 paragraph 3 of Chapter Six Settlement Convention is applicable in this case *mutatis mutandis*, because the intended purpose of this regulation was to exclude any kind of review by German courts with respect to measures taken within the scope of paragraph 1 and 2 of Article 3 Chapter Six Settlement Convention. It is with a view to this intention that this provision requires its application in a case where claims are asserted against a proprietor who derives his right to possession from a person who acquired title to property by one of the measures named under Chapter Six Article 3 paragraph 1 and 2 of the Settlement Convention (*BGHZ* 32, 170, 172).

bb) The expropriation of the Plaintiff's father by the 12th Decree of the President of Czechoslovakia dated June 21 1945 "*über die Konfiskation und beschleunigte Aufteilung des landwirtschaftlichen Vermögens der Deutschen, Ungarn sowie der Hochverräter und Feinde des tschechischen und slowakischen Volkes*" (On the Confiscation and accelerated allocation of agricultural property owned by German and Hungarian nationals and also by persons having committed treason and acted as enemies of the Czech and Slovak People), (published in *Dokumentation der Vertreibung der Deutschen aus Ost-Mitteleuropa*, Vol IV, 1., 1957, p 225) also represents a measure within the meaning of Chapter Six Article 3 paragraph 1 Settlement Convention. Insofar as the Plaintiff argues that the prerequisites required for this provision have not been met for the reason alone that the provision only covers such measures carried out with regard to

"German external assets or other property", while his father had never been a German national, we cannot agree with this argument. It is true that from a German point of view the Plaintiff's father had never been a German national. However, this is irrelevant here. In accordance with the general opinion, the sole decisive factor in this context is the point of view held by the expropriating State. The Federal Court of Justice set forth in a former decision the following argument:

> "*Artikel 3 Abs. 1 des 6. Teils des ÜberLV hat die Maßnahmen zum Gegenstand, die sich gegen das deutsche Vermögen im Sinne der Feindgesetzgebung des Staates richten, der die Beschlagnahme durchgeführt hat; ob das beschlagnahmte Vermögen nach dieser Gesetzgebung deutsches oder ausländisches Vermögen ist, ist ausschließlich von dem Staat zu entscheiden, der die Vermögenswerte beschlagnahmt hat*" (Article 3 paragraph 1 of Chapter Six Settlement Convention concerns such measures as are directed against German assets within the meaning of legislation enacted with respect to its enemies by the State who carried out the seizure; the question of whether, in accordance with this legislation, the assets seized are German or foreign assets is to be answered exclusively by the State who seized the assets." (*BGHZ* 32, 170, 172 *et seq*; same opinion Soergel/Kegel, Article 7 marginal note 888; Mann, *Zum Privatrecht der deutschen Reparationsleistung*, 1962, p 16, 18; Ehlers, *JZ - Juristenzeitung* - 1952, 465, 467; Lieberknecht, *NJW - Neue Juristische Wochenschrift* - 1956, 569, 574; same opinion already to Allied High Commission Law No. 63, *BGHZ* 8, 378, 382 *et seq*).

This is the result of the "accessory" nature of the regulations under Article 3 of Chapter Six Settlement Convention, because these regulations themselves do not effect seizures. On the contrary, they are confined to sanctioning for the territory of the Federal Republic of Germany, and without additional examination on the merits, such expropriations as carried out and performed in a foreign country (*BGHZ* 8, 378, 382 *et seq*; Ehlers, *JZ* 1952, 465, 466). And this is obviously in accordance with the object and purpose of these regulations, which were intended to "put an end" to the seizures in connection with World War II (Soergel/Kegel, before Article 7 marginal note 881; Lieberknecht, *NJW* 1956, 569, 571; Beitzke, *MDR - Monatsschrift für Deutsches Recht* - 1957, 277, 278). This could only be reached by debarring all foreign expropriations within the meaning of Article 3 paragraph 1 of Chapter Six Settlement Convention from an examination by German courts. At the same time, this means that there is no room for the objection that these expropriations violate the German *ordre public* (Article 6 *EGBGB - Einführungsgesetz zum Bürgerlichen Gesetzbuch* (Introductory Law to the German Civil Code)) ( *BGH - Bundesgerichtshof* (Federal Court of Justice) - *NJW* 1957, 217; Soergel/Kegel, before Article 7 marginal note 889).

In contrast to the Plaintiff's suspicion, this will not present an opportunity for third countries to keep expropriating non-German assets as German assets and thereby evade legal control for such measures. On the one hand, Article 3 paragraph 3 of Chapter Six Settlement Convention merely excludes German jurisdiction, but not the jurisdiction of the expropriating State or other third States. And on the other hand, this regulation has effect for German external assets only, which is to say that a prerequisite for its application is the fact that the expropriated assets have to be situated in the territory of the expropriating State, the so-called principle of territoriality (*BGHZ* 62, 340, 346 *et seqq* with reference to Allied High Commission Law No. 63). However, in such cases, German courts do not have international jurisdiction anyway - at least at the point of time the expropriation is carried out. Finally, the Plaintiff's suspicion submitted to the court is also to be neglected on the ground that the provisions of the Settlement Convention concerned here sanction no other than those expropriations that had already been carried through or become effective prior to the date the Settlement Convention came into force (*BGH MDR* 1957, 736, 737, with comment Beitzke = *Lindenmaier-Möhring, Überleitungsvertrag Nr.* 6 with comment Rietschel; Soergel/Kegel, before Article 7 marginal note 879 *et seq*; Mann, *loc cit*, p 19). With reference to such expropriations or seizures which did not take place but after the date the Settlement Convention had come into force, German jurisdiction is not excluded.

By the way, it is prevailing law in other areas, too, that such measures resulting from the defeat of Germany in World War II are accepted without any review as to their legality. For example, expropriations effected on the part of the Soviet Union in their former occupation zone are accepted without examination to the merits, too (*BVerwG* - *Bundesverwaltungsgericht* - (Federal Administrative Court) *NJW* 1994, 2777, 2778; 3306, 3307).

cc) The confiscation of property owned by the Plaintiff's father was also effected by Czechoslovakia for one of the purposes mentioned in Chapter Six Article 3 paragraph 1 Settlement Convention. And the preamble of Decree No 12 does not conflict with this purpose. It reads as follows:

"*Um dem Rufe der tschechischen und slowakischen Bauern und Landlosen nach einer konsequenten Verwirklichung einer neuen Bodenreform entgegenzukommen und geleitet vor allem von dem Streben, ein für alle Mal den tschechischen und slowakischen Boden aus den Händen der fremden Deutschen und madjarischen Gutsbesitzer wie auch aus den Händen der Verräter der Republik zu nehmen und ihn in die Hände des tschechischen und slowakischen Bauerntums und der Landlosen zu geben, bestimme ich auf Vorschlag der Regierung:..*" (In order to accommodate Czech and Slovak peasants and people who do not own any land and who call for a consistent realisation of a new land reform, and in particular guided by the intention to take Czech and Slovak land once and for all out of the hands of the foreign German and Magyar landowners and also out of the hands of the traitors of the Republic, and in order to give it into the hands of the Czech and Slovak peasantry and people not owning any land, I hereby order upon the government's proposal: ..."

Insofar as the Plaintiff argues in this respect that the confiscation of his father's landed property was solely a measure taken in the context of land reform, to which Chapter Six Article 3 paragraph 1 Settlement Convention is not applicable (with the same result Seidl-Hohenveldern, *NJW* 1953, 1389, 1390; Blumenwitz, *Flucht und Vertreibung und ihre vermögensrechtlichen Folgen*, in : *Flucht und Vertreibung*, Cologne 1987, p 185, 196, giving the reason that this was a collective punitive measure), the Court's Section is not in a position to support this argument. With a view to the application of Allied High Commission Law No. 63 or Chapter Six Article 3 paragraph 1 Settlement Convention respectively, German court's precedents have so far differentiated between the various "Beneš-Decrees". With respect to Decree No 5 as of May 19 1945 and Decree No 108 as of October 25 1945 (reproduced in *Dokumentation, loc cit*, p 204 *et seqq*, 263 et seqq) the court confirmed that these were measures within the meaning of Allied High Commission Law No. 63 or Chapter Six Article 3 paragraph 1 Settlement Convention respectively (*BGH IPRspr. -Rechtsprechung des Bundesgerichtshofs zum Internationalen Privatrecht* - 1952/53, No 294, p 591, 595, in so far in *BGHZ* 8, 378 not reproduced; *BFH WM - Bundesfinanzhof Wertpapier-Mitteilungen* - 1957, 888, 889; *BAG AP - Bundesarbeitsgericht Arbeitsrechtliche Praxis - Int. Privatrecht Nr. 2* with comments by Beitzke). It has to be noted in this respect that the Decree No 5 of May 19 1945 only ordered the preliminary seizure of specific items, while Decree No 108 of October 25 1945 relates to their confiscation. Decree No 108 of October 25 1945 is entitled Decree *"über die Konfiskation feindlichen Vermögens und den Fond der nationalen Erneuerung"* (on the confiscation of enemy assets and the Fund of National Renewal). The *BGH* regarded this decree both as a measure taken *"im Zusammenhang mit dem Kriege gegen Deutschland"* (in connection with the war against Germany) and as a measure taken *"zur Befriedigung von Ansprüchen gegen Deutschland"* (to satisfy claims against Germany) within the meaning of Allied High Commission Law No. 63 (*BGH IPRspr* 1952/53, No 294, p 591, 595; agreeing hereto Raschhofer, *Festschrift für von der Heydte I*, 1977, p 459, 504, 511). This is primarily founded on the fact that only the assets of German and Hungarian nationals (with respect to the differentiation between *"Nationalität und Staatsangehörigkeit"* (nationality and citizenship) in this context cf Raschhofer, *loc cit*, p 506, 511 *et seq*) and of collaborators was confiscated and then distributed. With respect to the Decree No 100 of October 24 1945, however, the Federal Court of Justice denied that the requirements of Allied High Commission Law No. 63 were fulfilled. In this case, the decree did not represent a measure arising out of the war, but a measure taken on economic grounds, because the sole criterion for expropriation was the size of special industrial enterprises and not at all the citizenship or nationality of their respective owners (*BGHZ* 18, 1, 6 *et seq*).

The Decree No 12 dating from June 21 1945, which is of interest in this matter, is a measure within the meaning of Chapter Six Article 3 paragraph 1 Settlement

Convention (same opinion Raschhofer *loc cit*, p 504). It is true that it becomes evident from the Preamble and Section 1 paragraph 1 that also economic objectives are pursued by this Decree. However, the essential objective was the expropriation of German and Hungarian nationals, ie nationals of the two enemy nations in World War II. By their very nature, these confiscations were a measure directed against enemy assets, which also ensues from the history of these measures going back to the year 1943 (cf Raschhofer *loc cit* p 509 *et seq*; same opinion Wierer, in : *Recht auf Heimat*, Vol 4, p 125; also "*Richtlinien für die Ausweisung der deutschen Bevölkerung aus der wiedererrichteten Tschechoslowakei - 10 Punkte-Plan Benes' von 1944*", reproduced in *Dokumentation loc cit* p 181 *et seq*). In an overall view, the redistribution connected with the confiscation of enemy assets does not justify an evaluation that differs from the evaluation of the Decree No 108, which also provides for a redistribution of confiscated assets in its Sections 6 and following.

dd) The Plaintiff's father was also expropriated by the Decree No 12, insofar as this is provided for in the decree. The Czechoslovakian authority responsible for the execution of the expropriation by act of law, ie the Regional National Committee in Olomouc, had interpreted and applied the regulations to the effect that the Plaintiff's father was covered by this regulation, being a "*Person der deutschen Nationalität*" (person of German nationality) within the meaning of Section 1 paragraph 1(a) of the Decree No 12. The complaint the Plaintiff's father filed against this interpretation was rejected by the National Committee Brno by its decision dated January 16 1946. This decision was then confirmed by the judgment of the Administrative Court Bratislava dated November 21 1951.

In contrast to the view taken by the Plaintiff, the question of whether these decisions were in accordance with governing Czechoslovakian law is not subject to an examination by German courts. And this is true irrespective of the regulations contained in the Settlement Convention (cf *OLG - Oberlandesgericht* (Court of Appeal) - Bremen *AVR - Archiv des Völkerrechts* - 9 (1961/62), 318, 353; *Münchener Kommentar* /Kreuzer, Article 38 Annex III marginal note 37; Seidl-Hohenveldern, *Internationales Konfiskations- und Enteignungsrecht*, 1952, p 42 *et seqq*; however of different opinion Staudinger/Stoll, *Internationales Sachenrecht*, marginal note 144; Soergel/Kegel before Article 7 marginal note 813). It is solely for the competent Czechoslovakian authorities to decide on the interpretation and application of Czechoslovakian law on the territory of the former State of Czechoslovakia. Courts and public authorities of other States are not authorised to replace the interpretation of Czechoslovakian public authorities and courts by their own interpretation of Czechoslovakian law. In compliance with this rule and within the scope of a recognition of a judgment pursuant to Section 328 *ZPO - Zivilprozeßordnung* (German Code of Civil Procedure) - there is no review of foreign law with regard to the question of whether the foreign court applied its law in a proper way. Insofar as individual cases are concerned where the result of national application of the law of the foreign State appears to be arbitrary or unacceptable for other reasons, it will suffice to refuse recognition of such a decision by invoking the principle of *ordre public*, and it will not be necessary to deny the decision its national lawfulness in the foreign State. And there is no different conclusion to be drawn from the Federal Court of Justice's "*AKU Entscheidung*" (*NJW* 1957, 217) [so-called

AKU-decision]. It is by no means postulated in that decision that German courts should form an opinion on the lawfulness of expropriations effected in foreign countries by applying the right of the expropriating State. In the case at issue there, the interpretation of foreign law by a German court was of importance by virtue of the fact alone that the Court had to clarify whether the specific item of property involved in the litigation, ie shares, was included in the expropriation.

ee) Expropriation of the Plaintiff's father by the Decree No 12 also included the painting concerned here. Subject matter of the expropriation pursuant to Section 1 paragraph 1 of the Decree No 12 was "*das Landwirtschaftsvermögen*" (agricultural property). This also comprised pursuant to Section 4 of the Decree No 12 the buildings pertaining thereto, movable inventory and livestock and equipment. This is further specified by Section 7 paragraph 4 of the Decree No 12 to the effect that also "*Denkwürdigkeiten*" (memorabilia) in the buildings are covered by expropriation. And "memorabilia" in the buildings also comprise *inter alia* paintings (cf the Explanatory Notes with Respect to the Execution of the Decree by the President of the Republic dated June 21 1945 with respect to Article 7 paragraph 4).

3. There is no reason why the Court's Section should suspend the proceedings pursuant to Section 148 *ZPO - Zivilprozeßordnung* (German Code of Civil Procedure) - in accordance with the Plaintiff's application and with a view to the decision of the competent authorities in a possibly pending procedure for equalisation of burdens. It is not to be expected that in such a procedure the essential issues of this lawsuit could be clarified, because, independent of the question of whether or not the Plaintiff is

"*deutscher Volkszugehöriger*" (of German ethnic origin) within the meaning of Section 230(a) *LAG* - *Lastenausgleichsgesetz* (Equalisation of Burdens Act), the Plaintiff is not entitled to claim an equalisation of burdens. And this is so, because according to Section 230 paragraph 1 *LAG*, the person who suffered the loss is only entitled to raise such a claim, if he had his permanent residence within the territory of application of the German Basic Law or in Berlin (West) on December 31 1952. However, this is obviously not the case as far as the Plaintiff or his father are concerned. And it is evident that none of the exemptions of Section 230 paragraph 2 *LAG* are applicable here. Furthermore, the Plaintiff would not be entitled to raise a claim under the Equalisation of Burdens Act with respect to the painting concerned here, for the mere reason that equalisation of burdens for the loss of works of art are excluded pursuant to Section 7 No 4 *Feststellungsgesetz* (Declaratory Statute).

II.

The ancillary decisions with respect to this lawsuit are based on Sections 91, 101 paragraph 1, 709, 108 *ZPO* (Code of Civil Procedure).

III.

The **Value in dispute** is fixed at DM 500,000.00.

Dr. Feuerherdt Becker Dr. Schmidt

Executed:
(signed signature, illegible)
(stamp:) Hachmer *Justizangestellter*(court clerk)
as registrar of the court's registry

(seal with coat of arms
and number: 53):
*Landgericht Köln*
(Regional Court Cologne)

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THIS IS TO CERTIFY THAT the above is a complete and correct translation of the German original, which was presented to me as a copy of the original document. The translation comprises a total of 16 pages.

Düsseldorf,
November 28 1999

C. Grunewald

Cornelia Grunewald Dipl. Übers.

(Cornelia Grunewald)
Commissioned translator
for the English Language
in the District of the
*Oberlandesgericht*
(Court of Appeal)
Düsseldorf

## Annex 29

# DECISION OF THE COURT OF APPEAL OF COLOGNE OF 09 JULY 1996 (REF. NO. 22 U 215/95)

Translation of the German Original

030

22 U 215/95
5 O 182/92

LG *Köln* (Regional Court Cologne)

(Coat of arms)

Enclosure to the Protocol
dated July 9 1996
Pronounced on July 9 199
Steffen, J.O.S.
(*Justizobersekretär*)
(title of a judicial officer)
in his capacity as registrar of
the court's registry

## *OBERLANDESGERICHT KÖLN*

(Court of Appeal Cologne)

**IN THE NAME OF THE PEOPLE**

**JUDGMENT**

In the lawsuit

His Serene Reigning Highness Prince Hans Adam II of Liechtenstein,
Vaduz Castle, FL-9490 Vaduz

Plaintiff and Appellant

- Authorised legal representatives: *Rechtsanwälte* (Lawyers) Scherff, Dr. Hahn,
Dr. Krumbiegel, Dr. Hofmeister
and Coßmann in Cologne -

versus

the Municipality of Cologne, represented by the *Oberstadtdirektor* (chief administrative officer of the city), Town Hall, 50670 Köln

Defendant and Appellee

- Authorised legal representatives: *Rechtsanwälte* (Lawyers) Prof. Deringer, Dr. Tessin, Dr. Hermann, Dr. Danelzik, Dr. Pfeffer, Dr. Picot, Kummer, Dr. Leiendecker and Dr. Borris in Cologne -

intervening third party:

Historical Monument Office in Brno, Radnicka 2, 60154 Brno, Czech Republic

- Authorised legal representatives: *Rechtsanwälte* (Lawyers) Dr. Köhler, Dr. Vieregge, Prof. Dr. Salzwedel, Dr. Bauer, Prof. Dr. Jacobs, Stiegler, Dr. Piltz, Dr. Loschelder, Dr. Rüffer, Dr. Strothmann, Dr. Lauer, Dr. Drouven, Dr. Kappus, Dr. Budde, Dr. Schnepp, Dr. Wiehe, Dr. Wahlers and Dr. Grimm in Cologne -

following the oral hearing on May 28 1996, the *22. Zivilsenat des Oberlandesgerichts Köln* (22nd Division for Civil Matters of the Court of Appeal Cologne), represented by the presiding judge of the Court of Appeal Oehler, the judge of the Court of Appeal Eickmann-Pohl and the judge of the Regional Court Caliebe,

**held as follows:**

> The Appellant's appeal against the judgment of the 5. *Zivilkammer des Landgerichts Köln* (5th Section for Civil Matters of the Regional Court Cologne) - 5 O 182/92 - is dismissed.

The costs of the appellate proceedings and the extra-judicial costs of the intervening third party shall be recoverable from the Plaintiff.

The judgment is provisionally enforceable.

The Plaintiff may avert execution by the Defendant and the intervening third party by providing a security to the amount of DM 25,000.00 for each party, unless security to the same amount was provided prior to execution.

The respective securities may also be provided by way of an absolute guarantee to assumed by a major German bank or public savings bank.

## Statement of the facts:

The Plaintiff is the heir of his father, the former Prince of Liechtenstein. Until the end of 194 his father was the owner of the painting at issue by Peter van Laer "*Der große Kalkofen*" had been part of the Liechtenstein family's collection since 1767 at least. At the end of W War II, the painting was to be found in one of the castles of the Liechtenstein family on territory of today's Czech Republic. In 1991, the Defendant received the painting from intervening third party as a loan for an exhibition. By virtue of an interlocutory injunction of Regional Court Cologne dated November 11 1991 - 5 O 388/91 - sequestration of the pain was effected on December 17 1991.

The Plaintiff demands the Defendant's consent that the painting be returned to him. In opinion, he has become the owner of the painting in his capacity as heir of his father. claims that the painting had not been the object of expropriation measures in Czechoslova and in any case, such measures were invalid or ineffective on the grounds that they repres a violation of the *ordre public* of the Federal Republic of Germany.

The Plaintiff filed the motion that

> the Defendant should be ordered to return to him the painting by Pieter van L entitled "*Szene um einen römischen Kalkofen*" (dimensions 51.5 cm X 69.2 cm), declaring his consent that the above-mentioned painting be handed over to the Plai from the custody of the *Obergerichtsvollzieher* (senior bailiff) Kramer in his capacity sequestrator, and by releasing the painting in this respect.

The Defendant and the third party intervening in his support filed the motion that

> the case be dismissed.

The Defendant and the intervening third party stated that the Plaintiff's father had lost his title to ownership with respect to the painting as a result of an expropriation effected in Czechoslovakia. The party intervening in support of the Defendant submits in this respect that the painting at issue was expropriated by the 12th Presidential Decree dated June 21 1945. The legality of such expropriation was constituted by judgment of the Administrative Court Bratislava on November 21 1951.

By its judgment of October 10 1995 - 5 O 182/92 *LG Köln* (Regional Court Cologne) - which is referred to here with respect to all specific details, the Regional Court dismissed the case. In its reasons for the decision, the court stated that the claim was inadmissible, recourse to German courts was excluded. This ensues from Article 3 of Chapter Six of the Convention on the Settlement of Matters Arising out of the War and the Occupation (Settlement Convention) dated October 23 1954, which is still in force today. The Court further states that the prerequisites of this regulation are fulfilled. The expropriation of the Plaintiff's father by way of the 12th Decree of the President of Czechoslovakia as of June 21 1945 represented a measure within the meaning of Chapter Six Article 3 paragraph 1 Settlement Convention.

With the pleading received on November 15 1995, the Plaintiff appealed against this judgment served on him on October 20 1995, and he delivered a statement of grounds for his appeal which was received by the court on February 27 1996, after an extension of time for filing such statement of grounds for appeal had been granted until March 1 1996. The Plaintiff holds the view that the Settlement Convention was completely repealed by the so-called Two-Plus-Four Treaty dated September 12 1990. The exchange of letters between the Federal Ministry for Foreign Affairs of the Federal Republic of Germany and the Embassies of the Three Western Powers as of September 27/28 1990 was not suited to effect continued validity of Article 3 paragraph 3 of Chapter Six Settlement Convention, because this exchange of letters was not approved of and ratified by the competent legislative bodies of the Federal Republic of Germany. In addition, the requirements of Article 3 paragraph 3 of Chapter Six Settlement Convention were not fulfilled. The confiscated property of the Plaintiff's father was not part of German external assets within the meaning of this provision. This provision was part of international law of war that could not be applicable to neutral States like Liechtenstein. Neither was this a reparation measure; to the contrary, the Beneš-Decree No 12 was of a punitive nature. And finally, in view of the group of persons protected thereby, the respective provision of the Settlement Convention would not justify its application, nor even an analogous application, with respect to the Plaintiff.

The Plaintiff files the motion that

1.

in variation of the judgment passed by the Regional Court, the Defendant should be ordered to return to him the painting by Pieter van Laer entitled "*Szene um einen römischen Kalkofen*" (dimensions 51.5 cm X 69.2 cm), by declaring his consent that the above-mentioned painting be handed over to the Plaintiff from the custody of the *Obergerichtsvollzieher* (senior bailiff) Kramer in his capacity as sequestrator, and by releasing the painting in this respect.

2.

within the scope of execution of the judgment, the court should admit that security can also be provided by way of a guarantee to be assumed by a major German bank or public savings bank.

The Defendant files the motion that

1.

the appeal be dismissed.

2.

alternatively, the Defendant should be allowed to provide a security - if any - by way of a guarantee to be assumed by a major German bank or public savings bank.

The third party intervening in support of the Defendant files the motion that

the appeal of the opposing party be dismissed.

The Defendant and the intervening third party hold the opinion that the Two-Plus-Four Treaty had not repealed the Settlement Convention, but that such repeal was effected later by the Exchange of Letters dated September 27/28 1990, which simultaneously agreed on the continued application of those provisions of the Settlement Convention which are relevant for the case at hand. As far as the Decree No 12 is concerned, this was not an economic policy measure but a measure directed against enemy assets. Consequently, the prerequisites of this provision are fulfilled. The fact that the provision could be applied to the Defendant ensues from the provision's purpose.

With respect to all further details as to the state of affairs and the legal position, the Court hereby refers to the contents of the pleadings and statements exchanged and the documents submitted by the parties.

## Statement of reasons on which the decision is based:

The Plaintiff's appeal, filed in due form and time and admissible in all other respects, is not successful as to the merits. The judgment passed by the Regional Court, to the arguments of which the Senate refers in supplement, is in compliance with the factual and legal position. The Plaintiff's arguments of appeal do not justify any different evaluation.

I.

The claim is inadmissible. Pursuant to Chapter Six Article 3 paragraph 3 in conjunction with paragraph 1 of the Convention dated May 26 1952 with respect to the Settlement of Matters Arising out of the War and the Occupation (Settlement Convention), recourse to German courts is precluded for the claim raised here.

The term German jurisdiction (*facultas jurisdictionis*) comprises the power of decision emanating from State sovereignty and generally conferred by the State to its courts, that is the natural power to administer justice (*BGH - Bundesgerichtshof* - (Federal Court of Justice) *JZ - Juristenzeitung* - 1958, 241, 242). In delimitation of the international jurisdiction of a court, which lays down to which extent a State makes use of its jurisdiction and which consequently presupposes the existence of such jurisdiction, German jurisdiction marks the boundaries set by international treaties, customary international law and recognised general rules of international law to the power of a State exercising sovereign jurisdiction on its territory (Eickhoff, *Inländische Gerichtsbarkeit und internationale Zuständigkeit für Aufrechnung und Widerklage*, Berlin 1985, 21, 26; Linke, *Internationales Zivilprozeßrecht*, 2nd Ed, Köln 1995, sec 3 marginal note 65).

Article 3 paragraph 3 in conjunction with paragraph 1 of Chapter Six Settlement Convention excludes German jurisdiction for claims and actions against persons who, directly or indirectly and in the course of reparation measures, have acquired title to property with regard to seized German external assets. This provision has not lost its validity by Article 7 of the Treaty on the Final Settlement with respect to Germany, signed in Moscow on September 12 1990 (Two-Plus-Four Treaty). The prerequisites of Article 3 paragraph 3 of Chapter Six Settlement Convention are fulfilled.

1.

In Article 7 paragraph 1 sentence 1 Two-Plus-Four Treaty, the Victorious Powers declare the termination of their rights and responsibilities with respect to Germany as a whole and Berlin. As a result, the respective quadripartite agreements connected therewith are terminated pursuant to Article 7 paragraph 1 sentence 2 Two-Plus-Four Treaty. Article 7 paragraph 1 Two-Plus-Four Treaty finally states that full sovereignty of the united Germany is re-established with respect to its foreign and domestic affairs. The extinction of quadripartite law with respect to Germany as a whole, as established by Article 7 paragraph 1 sentence 2 Two-Plus-Four Treaty, is supplemented by paragraphs 2 and 3 of the agreement between the governments of the Federal Republic of Germany and the three Western Allies dated September 27/28 1990 with respect to the Convention on Relations between the Three Powers and the Federal Republic of Germany and the Convention on the Settlement of Matters Arising out of the War and the Occupation. In accordance with paragraph 2 of this Convention, the Settlement Convention ceases to be in force with the exception of individual provisions of the instrument listed under paragraph 3, which also includes Article 3 paragraph 1 and 3 of Chapter Six.

The intergovernmental agreement dated September 27/28 1990 is effective without any qualification both under international and constitutional law. The fact that the Settlement Convention is abrogated hereby while at the same time the provisions listed under paragraph 3 are preserved, does not conflict with the practical realisation of the agreement dated

September 27/28 1990 in the form of an exchange of notes between the ministries for foreign affairs of the States involved. On the contrary, as a result of this procedure, the provisions concerned came into effect as early as on September 28 1990, while the Two-Plus-Four Treaty signed on September 12 1990 did not become internationally binding but after depositing of the last instrument of ratification on March 15 1991 (the respective approval required for the adoption of this international treaty of the Federal Republic of Germany dates from October 11 1990, *BGBl - Bundesgesetzblatt* - (Federal Law Gazette) 1990 II, 1317).

a)

The abrogation of the Settlement Convention was not already effected by the Two-Plus-Four Treaty, which would have had the result that abrogation by the exchange of letters would have been of no more than a declaratory nature and, in contrast thereto, the agreed preservation of the provisions of Chapter Six Article 3 Settlement Convention would have had a constitutive effect.

The termination of all "quadripartite" agreements as ordered in the Two-Plus-Four Treaty is necessarily connected with Article 7 paragraph 1 sentence 1 Two-Plus-Four Treaty, which provides for a termination of the Four Allies' rights and responsibilities with respect to Germany as a whole and Berlin. As follows implicitly from the systematic and teleological interpretation of sentence 2, only such conventions are regarded as quadripartite agreements which have been entered into by the Four Allies among themselves and with respect to Germany as a whole, but not treaties of the Federal Republic of Germany with the Three Western Powers (cf Blumenwitz, *Das Offenhalten der Vermögensfrage in den deutsch-polnischen Beziehungen*, p 60; Brand, *Souveränität für Deutschland*, Cologne 1994, p 255; Schweitzer, *Verträge Deutschlands mit den Siegermächten*, in Isensee/Kirchhof, *Handbuch des Staatsrechts*, Vol 8, Heidelberg 1995, sec 190 marginal note 39). This follows directly from the wording of the treaty that is exclusively connected to the termination of rights and responsibilities of the four above-named States with respect to Germany as a whole (cf also Gornig, *Der Zwei-plus-Vier-Vertrag unter besonderer Berücksichtigung grenzbezogener Regelungen*, *ROW - Recht in Ost und West* - 1991, 97, 105, fn 65).

Nothing else ensues from Article 7 paragraph 2 Two-Plus-Four Treaty. The fact that the united Germany regained full sovereignty with respect to its internal and external affairs is the logical consequence of the agreed regulations under paragraph 1 with respect to Germany as a whole. This is already indicated by the use of the word "accordingly" (cf Blumenwitz, *Der Vertrag vom 12. September 1990 über die abschließende Regelung in bezug auf Deutschland*, *NJW - Neue Juristische Wochenschrift* - 1990, 3041, 3047). When some experts in the relevant literature are of the opinion that preservation of the Western Powers' rights would have required an express reservation to be included into the Two-Plus-Four Treaty, and failing such a reservation, the conflict between the provisions of paragraph 3 of the agreement dated September 27/28 1990 on the one side and Article 7 paragraph 2 on the other side would have to be decided to the favour of the latter (Fiedler, *JZ* 1991, 685 (690); Gornig, *ROW* 1991, 97 (105); Blumenwitz in the expert opinion rendered on the case under consideration, p 13 [German original, p 16 English translation]), this opinion does neither pay sufficient regard to the history of its creation nor to the chronological order of events in connection with the Two-Plus-Four Treaty and the intergovernmental agreement. Paragraph 2 of the agreement dated September 27/28 1990, which was not entered into but after signing of the treaty of September 12 1990, would have been dispensable, if additional objective of Article 7 of the Two-Plus-Four Treaty had been to effect a termination of treaties entered into between the Federal Republic of Germany and the Three Western Powers. In addition, the wording of paragraph 3 of the intergovernmental agreement, according to which the respective provisions shall remain in force, could not be explained otherwise. In particular the opinion held in this respect to the effect that, as a result of Article 7 paragraph 2 of the Two-Plus-Four Treaty, the Settlement Convention was deprived of its basis required for a preservation of the agreement between the Three Western Powers and the Federal Republic of German, would not lead to the consequence that by entering into this treaty this agreement would have become ineffective or irrelevant in any other way. And this is so, because this is in contradiction to the parties' intention as such, as expressed on the one side in the explicit repeal of quadripartite rights only, and on the other side in the Exchange of Notes dated September 27/28 1990. It is quite obvious that the contracting parties of the Two-Plus-Four Treaty themselves, which means in this respect the Three Western Powers and the Federal Republic of Germany, not only considered it necessary that, in addition to the Two-Plus-Four Treaty, the abrogation of the Settlement Convention was formally regulated, but in particular did not intend to see all provisions of the Convention, in particular of Chapter Six Article 3 Settlement Convention, abrogated as a consequence of sovereignty. Consequently, both instruments concern different scopes of application as regards the regulations concerned, and one is the supplement of the other.

b)

On the above-mentioned grounds, and for lack of a reference to the contents of the Two-Plus-Four Treaty signed two weeks before, the agreement of September 27/28 1990 can neither be classified under international law as a part of the latter nor as an instrument for its interpretation within the meaning of Article 31(2)(a) of the Vienna Convention on the Law of Treaties (Vienna Convention), but has to be classified as an independent international treaty within the meaning of Article 2(1)(a) Vienna Convention (cf Blumenwitz, *Staatennachfolge und die Einigung Deutschlands, Teil I: Völkerrechtliche Verträge*, Berlin 1995, p 66). Excepting the provisions listed under paragraph 3, the Settlement Convention was effectively terminated on September 28 1990 under the rules of international law and with respect to the relationship between the contracting parties by virtue of the exchange of documents and the ensuing entry into force of paragraph 2 of the above-mentioned intergovernmental agreement. In accordance with Article 54(b) of the Vienna Convention, the termination of a treaty may take place at any time by consent of all the parties after consultation with the other contracting parties. In particular, it is not necessary that the termination or suspension is effected in the same way as the respective treaty itself (Ibsen, *Völkerrecht*, 3rd ed, sec 15 marginal note 71, p 174).

c)

The intergovernmental agreement is valid without qualification from the domestic point of view, too. In particular Article 59 paragraph 2 sentence 1 *Grundgesetz* (*GG* (German Basic Law)) does not conflict with such domestic validity. The agreement was entered into by the Federal Government in the form of an administrative agreement within the meaning of Article 59 paragraph 2 sentence 2 *GG* which does not require parliamentary approval. The term administrative agreement, which also includes intergovernmental agreements of the kind concerned here, comprises all international treaties of the Federal Republic which are not subject to Article 59 paragraph 2 sentence 1 *GG* (cf Schmidt-Bleibtreu/Klein-Klein, *GG*, 8th ed, Art 59, marginal notes 23, 25).

Participation of legislature was not required, because the preservation of Article 3 of Chapter Six Settlement Convention did not have a constitutive effect, these provisions not having been repealed by the Two-Plus-Four Treaty, but later on by the exchange of notes. In so far, the exchange of notes had no more than a declaratory effect. In so far as some of the experts in the relevant literature object hereto that the provisions of Article 3 Chapter Six Settlement Convention, which had been in force earlier pursuant to Chapter Six Article 1 and subject to a peace settlement, were now definitely enacted by the agreement of September 27/28 1990 and altered thereby in qualitative terms (Fiedler, *Die Wiedererlangung der Souveränität Deutschlands und die Einigung Europas*, *JZ* 1991, 685, 690; Blumenwitz in the expert opinion rendered on the case under consideration, p 12f (German original [p 15f English translation]), it is true that the legal position was not changed. The mere prospect that an annulment of the waiver of defence, of the ban on action and of the admittance of the relevant claims of persons who had been expropriated without compensation might be agreed in a peace treaty, did not have greater material weight than the prospect that Germany, now having regained its sovereignty, would enter into a respective treaty. In both cases, the admission of the respective claims has been and still is solely dependant upon the political circumstances and the negotiating position of the Federal Republic of Germany, and it is not apparent that the position of the Federal Republic of Germany has weakened in this respect. Now, therefore, looking at the agreement in a pure and simple way, it did not constitute new occupation rights, and consequently did not require participation of the legislature according to the principles of Article 59 paragraph 2 sentence 1 *GG*.

On the same grounds, the agreement did not require parliamentary approval with a view to Articles 14, 19 paragraph 4 and 6 respectively of the European Convention on Human Rights. With a view to the continued validity of Article 3 paragraph 3 of Chapter Six Settlement Convention, paragraph 3 of the intergovernmental agreement has an exclusively declaratory meaning, as was explained hereinbefore. Furthermore, the original instrument dated March 24 1955 is at the basis of such unchanged continued validity under German law with respect to Article 3 paragraph 3 of Chapter Six Settlement Convention. The case at issue does not constitute an encroachment on the Plaintiff's basic rights. On the contrary, the Plaintiff had not been entitled to bring an action even before the intergovernmental agreement of September 27/28 1990 came into force (cf also Schneider, *Die Liquidation deutschen Auslandsvermögens und ihre vertragliche Hinnahme durch die Bundesrepublik*, Heidelberg 1964, 63 f).

By the way, the consequence of a required approval to the preservation of Article 3 Chapter Six Settlement Convention would be such that the complete agreement made by the Exchange of Notes would be null and void. It is evident that the fact that essential parts of the Settlement Convention remained in force was a prerequisite for the abrogation of all other parts of the Settlement Convention by the parties to that convention, in particular by the Three Western Powers, who would not have entered into this agreement at all without an agreement on continuance of the above-mentioned provisions. Consequently, if the agreement on their continuance would have required approval of legislature in order to have domestic legal effect, then the abrogation would have depended on such approval, too. The consequence thereof would be continuance of all provisions of the Settlement Convention.

By the way, in so far as some experts are of the opinion that the agreement on the continued validity of Article 3 Chapter Six Settlement Convention required legislative approval, they do by no means draw the conclusion that the intergovernmental agreement was ineffective. On the contrary, by way of an interpretation in conformity with the constitution they interpret the regulation as a mere administrative regulation with regulating function, and hence it follows that a parliamentary approval procedure was not required. The consequence thereof is seen in the fact that, on the one side, the legislature of the Federal Republic of Germany can amend such regulation, and, on the other side, in the event that the latter does not act in this respect, that the Federal Republic of Germany is liable to pay compensation, which would not have any influence on the claim for restitution raised in the case at hand (cf Blumenwitz, *Staatennachfolge und die Einigung Deutschlands*, 1995, p 66 f).

Finally, even in the event that the provisions of the intergovernmental agreement were of a constitutive nature and were to be regarded from a domestic point of view as an ordinance issued by the Federal Republic and having the force of law, there is no violation of basic rights to be ascertained. By the agreement dated September 27/28 1990, the victims of expropriations without compensation were not deprived of any rights they still held before the agreement was signed. The renewed confirmation of the continued validity of Chapter Six Article 3 paragraph 1 and 3 Settlement Convention neither encroaches upon existing property rights, nor does it remove the victims of expropriations without compensation from the jurisdiction of their lawful judge. There is no rule of international law to the effect that also private persons who suffered an expropriation are entitled to a claim for restitution or compensation that can be asserted by legal procedure under civil law (cf Staudinger-Stoll, *BGB* 12th ed, *Internationales Sachenrecht*, marginal note 148). Pursuant to the wording and the genesis of paragraph 3, the ban on taking legal action through court proceedings only refers to bringing such actions before German courts which were already excluded before, and it does not extend to foreign or international jurisdiction (Wolf, *Zur Frage der Abgeltung von Reparationsschäden unter besonderer Berücksichtigung der Entstehungsgeschichte des* VI *Teils des Überleitungsvertrages*, Bonn 1964, p 106). In so far as, in individual cases, this is equal to the *de facto* removal from the jurisdiction of a lawful judge, such an impact of the regulation is no more than a kind of reflex and cannot be considered as an encroachment.

2.

As was the case before, the exclusion of German jurisdiction is therefore governed by the provisions of Article 3 paragraph 3 of Chapter Six Settlement Convention, and the prerequisites of this article are fulfilled in the case at hand.

The existence of German jurisdiction has to be examined *ex officio* as part of general procedural prerequisites. The criterion to be applied is the law of the forum state applicable at the time of the court decision, that is in this case the special provision of an international treaty, ie Chapter Six Article 3 paragraph 3 Settlement Convention.

In accordance with the intention of the parties to the Convention, this provision, that was drafted along the lines of the meanwhile abrogated Article 3 Allied High Commission Law No 63, is based on the envisaged target that one had to take the appropriate procedural steps resulting from the "final and non-appealable" legal relations that had been established for the Federal Republic of Germany and the private persons concerned when German external assets were liquidated by foreign States for the purpose of reparation (cf the grounds given by the Federal Government for the Convention on Relations between the Three Powers and the Federal Republic of Germany, Annex 4 to *BT-Drs.* - *Bundestagsdrucksache* - 1/3500 of June 21 1952, 54-56; Mann, *Zum Privatrecht der deutschen Reparationsleistung*, Tübingen 1962, p 14; to the same effect with respect to the parallel provision of Article 3 Allied High Commission Law No 63 *BGHZ* - *Amtliche Entscheidungssammlung des Bundesgerichtshofs in Zivilsachen* - 8, 378 (382); 62, 340 (346-351); Ehlers, *Die Rechtslage des deutschen Auslandseigentums nach dem AHKG 63, JZ* - *Juristenzeitung* - 1952, 465 (467)). In so far as the Plaintiff doubts this motivation of the parties, which is referred to by a catchword as the so-called "*Schlußstrich-Theorie*" (finality theory) (*BGH* (Federal Court of Justice), *WM - Wertpapier-Mitteilungen* - 1963, 81, 84; 1987, 153, 154; *OLG* Köln (Court of Appeal Cologne), *WM* 1961, 183, 190; Soergel-Kegel, *BGB* (German Civil Code) 11th ed, preface to Article 7 *IGBGB* marginal note 879, Beitzke, comment to *BGH MDR - Monatsschrift für Deutsches Recht* - 1957, 277; Lieberknecht, *Die Enteignung deutscher Mitgliedschaftsrechte an ausländischen Gesellschaften mit in Deutschland gelegenem Vermögen*, *NJW - Neue Juristische Wochenschrift* - 1956, 571), the Plaintiff fails to pay regard to the required differentiation between the actual acceptance intended by Article 3 of Chapter Six Settlement Convention and the explicit lack of legal recognition of the expropriations concerned. The waiver of German jurisdiction expressed in Article 3 paragraph 3 of Chapter Six Settlement Convention is limited to the actual acceptance of a legal status created by the Allies, which is already expressed in Article 3 Allied High Commission Law No 63, without waiving at the same time the substantive law on which the claims are based. On the contrary, when the Federal Republic of Germany preserves its legal point of view with respect to substantive law, this serves as a basis for negotiations that have not been terminated, in particular negotiations with the Czech Republic in its capacity as successor of the Czechoslovakian State and with respect to possible compensation payments resulting from an international claim in tort of the Federal Republic of Germany (Wahl, *Mehrheitsgutachten des Ausschusses für Rechtswesen und Verfassungsrecht des Bundestages über die Verfassungsprobleme der Vermögensgesetze*, reproduced in: *Institut für Staatslehre und Politik e.V.*, *Der Kampf um den Wehrbeitrag*, Vol 2, supplementary volume, München 1958, 595, 603; see also *FAZ - Frankfurter Allgemeine Zeitung* - of December 21 1995, No 297, p 5 with reference to the expert opinion of Tomuschat).

a)

The exclusion of German jurisdiction does not infringe the Plaintiff's basic rights under Articles 14, 19 paragraph 4 or 101 *GG* (German Basic Law). The view that Article 3 paragraph 3 of Chapter Six Settlement Convention sanctions a legal status that is contrary to Basic Law (cf Moosheim, *Reparationen im Bonner Vertragswerk*, *BB* 1952, 697, 698) does not take into account that the basic rights do in fact protect their subject against acts of domestic authority, but not against the exercise of foreign public authority abroad (*BVerfGE* 41, 126, 157; 43, 203, 209; *NJW* 1991, 1597, 1599; Leisner, *Das Bodenreform-Urteil des*

*Bundesverfassungsgerichts*, *NJW* 1991, 1569, 1571; Kutscher/Greve-Kutscher, *Bonner Vertrag und Zusatzvereinbarungen*, *München 1952*, *Teil VI Art. 3 ÜV*, note I. 2). As a result thereof - and on the grounds of political constraints in the field of foreign affairs - the national legislator is not prevented from excluding domestic legal protection against acts of foreign jurisdiction that are contrary to basic law in order to achieve a goal considered to be of higher importance. It is in this sense that Article 3 paragraph 3 of Chapter Six Settlement Convention aims at an exclusion of actions with respect to such claims which are directly or indirectly aimed at a seizure based on legislation with respect to enemy assets and effected by a State who benefits from this Convention (Raschhofer, *Die Deutsche Reparationsregelung und die Reparationsposition der Tschechoslowakei* in Kipp/Mayer/Steinkamm, *Um Recht und Freiheit*, *Festschrift für Friedrich August Freiherr von der Heydte*, Berlin 1977, 495, 504). The legal effects of this regulation are of an exclusively procedural nature. By applying the regulation there is no statement of whatever kind with respect to the lawfulness or validity of the liquidation measure that was executed against German external assets and on which the legal action is based (Kutscher/Greve-Kutscher, *Teil VI Art. 3 ÜV*, note I. 2; Raschhofer, *Festschrift von der Heydte*, 495, 504, and also to Art. 3 Allied High Commission Law No 63 Ehlers, *JZ* 1952, 465, 466).

b)

When applying the regulation in practice, it will be necessary to take into account the object and purpose of Article 3 paragraph 3 of Chapter Six Settlement Convention to some extent, because it will be necessary to judge whether its prerequisites are fulfilled, and the law of the expropriated State forming the basis of the relevant act of seizure will play a decisive part in such evaluation (*BGHZ* 8, 378, 383; 25, 127, 131; 32, 170, 172; OLG (Court of Appeal) Neustadt in *NJW* 1956, 960; Lieberknecht, *NJW* 1956, 571, 574; Mann, *Zum Privatrecht*, 19[illegible]; Staudinger-Stoll *loc cit* marginal note 144, cf also *BayObLG MDR* (Court of Appeal of Bavaria in *Monatsschrift des Deutschen Rechts*) 1972, 876). The counter position that aims at finding a satisfactory solution in the field of substantive law and holds the view that the individual elements of the rule of Article 3 Chapter Six Settlement Convention have to be illuminated in the light of an interpretation oriented at historical international aspects of the relevant declarations and conventions of the Allies (in this sense Blumenwitz, *Flucht und Vertreibung und ihre vermögensrechtlichen Folgen*, p 185, 196, 200; same opinion, as it seems, Beitzke, *MDR* 1957, 277, 278) does not do justice to the intentions pursued by the parties when entering into the Settlement Convention. In accordance with that view, German courts would be in a position to counteract such factual acceptance of liquidation of external assets as agreed in the Convention by using the principles of German international expropriation law as a basis for their decision, which had not been a decisive criterion neither for the authorities of the foreign State seizing the assets nor for the parties to the Convention sanctioning the measures (the Allies' intentions become clear for example in the Allied High Commission's note to the German Chancellor on August 4 1953, cited in Mann, *Zum Privatrecht*, p 20. It reads: "*Bei der Beschlagnahme und Liquidierung deutschen Auslandsvermögens geht jedes Land nach eigenen Rechtsbegriffen und -verfahren im Rahmen seiner unumschränkten Gerichtsbarkeit vor*" (When seizing and liquidating German external assets, each country proceeds on the basis of its own concept of law and legal proceedings within the scope of its absolute jurisdiction); cf also Lieberknecht, NJW 1956, 571 574; Mann, *Zum Privatrecht*, p 19).

The Plaintiff indirectly objects to a seizure and confiscation of his father's property - which also comprised *inter alia* the painting at issue - as German external assets for the purpose of reparations on the basis of the Presidential Decree No 12 dated June 21 1945, which was, in his view, contrary to substantive law and in particular contrary to international law. By Article 3 paragraph 3 in conjunction with paragraph 1 of Chapter Six Settlement Convention, German courts are debarred from taking a decision on the merits with respect to the lawfulness of the confiscation, because this means that, inevitably, the court would have to deal with implications of international and constitutional law. No more does the provision allow recourse to general principles of International Law within the meaning of Article 25 GG (German Basic Law) nor recourse to the German ordre *public* pursuant to Article 6 EGBGB - *Einführungsgesetz zum Bürgerlichen Gesetzbuch* - (Introductory Law to the German Civil Code) when procedural prerequisites for German jurisdiction are to be considered (Beitzke MDR 277, 278; Blumenwitz, *Die vermögensrechtlichen Folgen der Ostverträge*, JOR - *Jahrbuch für Ostrecht* - 13, 179, 224 Mann, *Zum Privatrecht*, 24).

This is already a sufficient reason to prevent the Plaintiff from claiming that the provisions of the Settlement Convention and in particular their application with respect to him as a national and head of a neutral State represented a violation of the law of peace. The exclusion of jurisdiction has to be considered solely under the aspect of whether or not constitutionally guaranteed basic rights of the Plaintiff are violated thereby. This is not the case, as was explained hereinabove. On this condition, it is also possible that the exclusion of jurisdiction concerns persons who do not possess the citizenship of one of the parties to the Convention.

aa)

The painting at issue is an external asset within the meaning of Article 3 paragraph 1 of Chapter Six Settlement Convention, to which paragraph 3 makes reference in this respect.
It is uncontested that the Plaintiff's father and his family did not possess German citizenship at any point of time. With reference to a historical interpretation of the term "German external assets" in the context of international law, some experts hold the view in legal literature - mostly in connection with the confiscation of Sudeten-German assets - that Article 3 paragraph 3 of Chapter Six Settlement Convention would only exclude German jurisdiction in cases of seizure of such assets which were the property of a citizen of the former German *Reich* within the borders as at December 31 1937 (cf Blumenwitz in *Flucht und Vertreibung*, p 185, 195; to Article 3 Allied High Commission Law No 63 Seidl-Hohenveldern - note to *BGH* (Federal Court of Justice) in *NJW* 1953, 1389f; Beitzke *MDR* 1957, 277, 278; Ehlers, *JZ* 1952, 465, 467). Insofar, the legal opinion is based in essence on the relevant regulations of the Potsdam Declaration or the Paris Reparation Agreement of January 16 1946 respectively, and, last but not least, in the light of the legal definition of Article 4(b) of Allied High Commission Law No 63 which was terminated as a result of the Two-Plus-Four Treaty, the affiliation of liquidated external assets is strictly interpreted in terms of international law within the meaning of nationality law. This interpretation corresponds to the viewpoint held by the Three Western Powers at that time with respect to substantive law and the reparation obligations to be imposed on Germany (cf Raschhofer, *Die Vermögenskonfiskation der Ostblockstaaten*, p 10 - 13). Nonetheless, it is in contrast to the above-stated object and purpose of Article 3 paragraph 3 of Chapter Six Settlement Convention as a means to attain replacement of the occupation statute (Wahl, *Der Kampf um den Wehrbeitrag*, 595, 603). With respect to the regulations concerning reparations obligations, the Settlement Convention develops an effect benefiting third parties, ie it benefits the States who joined the Paris Reparation Agreement, and consequently also Czechoslovakia (Raschhofer, in *Festschrift von der Heydte* 495, 500 - 503). This third party benefit in favour of Czechoslovakia inherent in the Settlement Convention would have the opposite effect, if the factual legal opinions of the expropriating State were not to be considered in the definition of the term "German external assets", and if

the latter were to be determined primarily by the interpretation of the parties to the Convention. Against this background, the precedents of the Federal Court of Justice have to be followed according to which the question of whether or not particular assets represent enemy property has to be examined on the basis of the relevant regulation of the expropriating State. In particular in accordance with the judgment of the Federal Court of Justice dated April 11 1960 (*BGHZ - Amtliche Entscheidungssammlung des BGH in Zivilsachen* - 32, 170, 172f), it will be sufficient for the application of Article 3 Chapter Six Settlement Convention that the assets were seized as German assets. The Federal Court of Justice, which had to decide in this case on the claim of a foreign appellant, stated that the subject matter of Article 3 paragraph 1 of Chapter Six Settlement Convention concerns such measures that were directed against German assets within the meaning of enemy legislation of the respective State who carried out the seizure; whether or not the seized assets in an individual case represented German or foreign assets in accordance with that legislation was to be decided exclusively by the State who seized the assets (cf also Raschhofer, in *Festschrift von der Heydte*, 495, 512).

This point of view is also consistent with the general rules of international law to be observed by way of Article 25 *GG* (German Basic Law). The provisions of Article 3 Chapter Six Settlement Convention do not contain a recognition of the seizure and expropriation of the agricultural property of the Plaintiff's father by the Czechoslovakian authorities. Nor is the personal sovereignty of the Principality of Liechtenstein violated. It is true that the principle derived from the sovereign equality of all States, ie that no State shall have the power of disposal over the citizenship of another State, is a general principle of international law and as such, via Article 25 *GG*, forms a part of Federal Law that has legal superiority; however, in accordance with Article 3 paragraph 3 of Chapter Six Settlement Convention, the decision of the Federal Court's Division refrains from any evaluation of the confiscation effected at that time. In this respect, the enactment of the status quo in the territory of the Federal Republic of Germany resulting from the exclusion of German jurisdiction is by no means more than a reflex-like impairment of the Plaintiff's position, which is not equal to a violation of his rights as a result of an encroachment. It is of no importance in this context that each of the mentioned decisions of the Federal Court of Justice is based on facts which exclusively go back to a dispute between persons who are nationals of contracting States of the Settlement Convention or of States benefiting from the Convention, while the Plaintiff and his father possess the citizenship of a State who has always been neutral. And this is so, because the jurisdiction of the supreme court reflected in these decisions goes back to a purpose-oriented interpretation of Article 3 Chapter Six Settlement Convention, which neither entails an encroachment upon the rights of neutral States nor an encroachment upon the Plaintiff's rights.

After all that has been said in this respect, a review of the facts by German courts concerning the validity and lawfulness of the confiscation at issue cannot be taken into consideration, because it was effected pursuant to the legislation of the confiscating State applicable in this respect and directed against German foreign assets located on its territory. Just like the administrative court in Bratislava to which the Plaintiff had recourse later on, the competent Czechoslovakian authorities considered the seized property of the Plaintiff's father as an issue coming under the provisions of Section 1 paragraph 1(a) of the Presidential Decree No 12 dated June 21 1945. This classification of the confiscation at that time is reason enough to justify the classification - regardless of its lawfulness or effectiveness pursuant to Czechoslovakian or international public law - as a measure directed against German external assets within the meaning of Article 3 paragraph 3 in conjunction with paragraph 1 of Chapter Six Settlement Convention. On the grounds of the exclusively procedural nature of the provision ordering the exclusion of German jurisdiction, it can be left undecided whether the wording of Article 3 of Chapter Six Settlement Convention was influenced by the ethnic terms of *deutsche Nationalität* (German nationality) or *deutsche Volkszugehörigkeit* (German ethnic origin) used at that time. And, finally, with respect to the matter at issue, the present legal opinion of the Czech State is of no importance either.

Section 1 paragraph 1(a) of the Presidential Decree No 12 dated June 21 1945 orders the confiscation of agricultural property "*aller Personen der deutschen und ungarischen Nationalität* " (of all persons of German and Hungarian nationality) without consideration of their citizenship. Pursuant to Section 2 paragraph 1 of the Decree, and subject to the exceptions of paragraph 2, people of German or Hungarian nationality include *inter alia* such persons "*welche bei jeder Volkszählung seit dem Jahre 1929 sich zur deutschen oder ungarischen Nationalität angemeldet haben*" (which registered for German or Hungarian nationality on the occasion of every census since the year 1929). The term " *deutsche Nationalität*" (German nationality) or, respectively, the term "*deutsche Volkszugehörigkeit*"(German ethnic origin) which was used parallelly thereto at that time with respect to national minorities, has not originated with the Decrees of the year 1945, but its origins already date back to the constitutional and administrative law of the Habsburg monarchy (Raschhofer, in *Festschrift von der Heydte*, 495, 506). As such, in the year 1930 already, it was included by the Czechoslovakian State in Section 2 of the governmental order with respect to the censuses dated June 26 1930. In accordance therewith, the personal characteristics to be indicated comprised both the person's citizenship and nationality which, in accordance with Sections 21 to 23 of that same order, was mainly dependent upon the mother tongue (cf Raschhofer in *Festschrift von der Heydte* 495, 506, 511). It is undisputed that the regional national committee in Olomouc which was competent at that time, the national committee in Brno and the administrative court in Bratislava regarded the Plaintiff's father as a German national in this sense. This legal opinion becomes manifest last but not least in the opinions delivered by the national committee, which expressly considered it "*für die Beurteilung der Sache vollkommen bedeutungslos*" (completely unimportant for its judgment of the case) whether somebody whose agricultural property is confiscated is "*Ausländer oder unser Staatsangehöriger, Oberhaupt oder Bürger eines neutralen oder anderen Staates*" (a foreign subject or a subject of our own country, the head or a citizen of a neutral or other State). The decision on the appeal further states "*daß diese Enteignung laut Bestimmung des zitierten Dekretes, welches die Enteignung ohne Entgelt aller Personen der deutschen oder ungarischen Nationalität ohne Rücksicht auf ihre Staatsangehörigkeit (anordne), durchgeführt worden sei*" (that this expropriation was executed pursuant to the cited Decree which orders this expropriation without compensation of all persons of German or Hungarian nationality regardless of their citizenship). The expropriation concerned "*die fremden Staatsangehörigen nach den gleichen Grundsätzen*" (foreign citizens pursuant to the same principles) as Czechoslovakian citizens (cf Annex, page 149 of the file). It can also be left undecided whether or not, on the occasion of the censuses in the years 1930 and 1939, the Plaintiff's father designated himself and his family as being of German ethnic origin. As follows from the judgment of the administrative court in Bratislava, it was already sufficient evidence in accordance with the respective legislation concerning enemy assets that it could be affirmed that their German ethnic origin was general knowledge.

bb)

The painting at issue was covered by the expropriation measures because it was part of so-called agricultural property that was subject to confiscation pursuant to Section 1 paragraph 1 of the Presidential Decree No 12. In accordance with Section 4 of the Decree, movable fixtures were also comprised thereby. Section 7 paragraph 4 of the Decree further specifies that so-called *Denkwürdigkeiten* (memorabilia) are regarded as movable fixtures. Furthermore, it follows from the directives of the competent ministries for agriculture and internal affairs with respect to the implementation of the Decrees No 12 and 108 that precious paintings located in castles, chateaux and palaces were to be confiscated in accordance with the provisions of the Presidential Decree No 12.

There can be no doubt that the seizure of the painting at issue was effective. In accordance with the Federal Court of Justice's jurisdiction, the only prerequisite in this respect is that the seizure was actually executed, which means that it was enforced and that the power of disposal of the person who had the title before was actually eliminated. Whether or not this represents an effective seizure within the meaning of Article 3 paragraph 1 and 3 of Chapter Six Settlement Convention has to be judged exclusively in accordance with the law of the State effecting the seizure, which is also the law to be applied in accordance with German private international law (*BGHZ* 25, 127, 131 - 133, 134, 141; *MDR* 1957, 276 (277); Soergel-Kegel before Article 7 marginal note 815, 880; Staudinger-Stoll *loc cit* marginal note 144; Kegel, *Internationales Privatrecht*, sec 23 II 5, 864; Lieberknecht, *NJW*, 571, 574). It is a non-controversial issue between the parties and proven by documents that the Plaintiff's father was actually deprived of his possession of the painting by the authorities entitled to execute the measures in accordance with Czechoslovakian law effective at that time. In view of the principles explained hereinbefore, however, we have to abstain from reviewing the lawfulness of the seizure in accordance with German constitutional law or general international law. As already explained, the only purpose pursued by Article 3 paragraph 3 of Chapter Six Settlement Convention is to exclude legal actions against the respective seizures irrespective of their lawfulness.

cc)

The seizure of the painting was also effected because of the state of war and for the purpose of reparation measures within the meaning of Article 3 paragraph 1 and 3 of Chapter Six Settlement Convention.

The confiscation of the Plaintiff's father's assets was based on the Presidential Decree No 12 dated June 21 1945 which is a matter of issue here, and in accordance with the wording and the history of this rule, the confiscation is a measure against German external assets within the meaning of Article 3 paragraph 1 and 3 of Chapter Six Settlement Convention (cf in this respect Raschhofer in *Festschrift von der Heydte*, 495, 509 - 511 as to Decree No 106). According to its title, and similar to the subsequent Decree No 108 dated October 25 1945, the Decree No 12 served the purpose of "*Konfiskation und beschleunigte Aufteilung des Landwirtschaftsvermögens der Deutschen, Ungarn*" (confiscation and accelerated distribution of agricultural property of German and Hungarian nationals) - that is to say of nationals of the two enemy nations - "*sowie der Hochverräter und Feinde des tschechischen Volkes*" (and of persons having committed treason and acted as enemies of the Czech people). The mere restriction of its personal scope of application is sufficient to justify the classification of the confiscation measures based thereupon as measures against enemy property within the meaning of Article 3 paragraph 1 and 3 of Chapter Six Settlement Convention (to Decree No 106, which contains a legal summary of the Czechoslovakian confiscation measures, *BGH, IPRspr - Rechtsprechung des BGH zum Internationalen Privatrecht* - 1952/1953, 591, 595; Raschhofer in *Festschrift von der Heydte*, 495, 504, 511) and it furnishes proof of the fact that the Decree was not simply connected with the nationalisation of private property and as such was merely part of an agrarian reform. The assets of the persons concerned were confiscated in their capacity as enemy assets and, according to President Beneš' comments it was meant to serve as "*Vorschuß auf die Reparation gegenüber dem deutschen Reich*" (an advance on the reparation vis-à-vis the German *Reich*) (cited by Raschhofer in *Festschrift von der Heydte*, 495, 511). The fact that, later on, they might not have been charged against Czechoslovakian reparation shares after all, cannot lead to the result that, in consideration of the legal point of view of the Czechoslovakian government at that point of time, the Decree No 12 is to be excluded from the applicable scope of regulations of Article 3 paragraph 1 and 3 of Chapter Six Settlement Convention. On the contrary, the detailed specification of the group of persons to whom the provisions are to be applied, as laid down in Section 3 of the Decree, is a confirmation that the ordered measures were directly connected with the war against Germany (cf also with respect to the legal viewpoint of the Federal Government the evaluation of the respective confiscations of the Polish State to the detriment of the expelled Germans by the parliamentary under-secretary of the Federal Ministry of Justice, Dr. de With, in the plenary session of the Federal Parliament on March 18 1975, reprinted in *Verhandlungen des*

*Deutschen Bundestages*, *BT-Prot* - *Bundestagsprotokoll* - 7/10953 f). When objections are raised to the effect that measures on the basis of the Decree No 12 were not executed for the purpose of reparations, but that such measures had been of a punitive nature and were taken against German foreign landowners for the purpose of expellation (cf in particular Raschhofer, *Vermögenskonfiskation*, 14 - 17; Blumenwitz, *JOR* 13, 179, 242; *Vermögensfrage*, 64 - 66; Kieminich, *Der Warschauer Vertrag, Grundlage oder Vernichtung privater Entschädigungsforderungen*, *JZ* 1971, 485, 487) then Article 3 paragraph 1 of Chapter Six Settlement Convention is misjudged in that it does not require at all that the confiscation had to be made exclusively for the purposes listed therein (cf Seidel-Hohenveldern - *Territoriale Begrenzung ausländischer Eingriffe in deutsches Vermögen nach dem Überleitungsvertrag*, *RIW* - *Recht der internationalen Wirtschaft* - 1957, 179, 182; *NJW* 1953, 1389, 1390).

In all other respects, this interpretation is contrary to the Czechoslovakian legal viewpoint which is to be observed within the scope of Article 3 paragraph 2 of Chapter Six Settlement Convention and according to which the regulations of the Decree No 12 were enacted on the grounds of the state of war with the German *Reich*.

Finally, this evaluation is confirmed by the statements of the administrative court of the Czech Republic in its so-called Dreithaler-Decision of March 8 1995. In its statement of grounds for its defeat of their Plaintiff's motion to repeal the Presidential Decree No 108 of October 25 1945, the court *inter alia* argues that the disputed Beneš-decree was directed against such persons "*die durch ihr Verhalten, in welcher Form auch immer, den nazistischen Staat unterstützt (hätten)*" (who had supported the Nazi-State by their conduct in whatever manner). The court further argues that it was in particular the tacit support of Nazism by the persons concerned that fostered persecution and terror in the former Bohemia and Moravia protectorate. The court explicitly points out that the Decree No 108 was in this respect "*zum Zeitpunkt seines Erlasses nicht nur ein legaler, sondern auch ein legitimer Akt*" (not only a legal, but also a legitimate act at the point of time it was issued) (cited in Reismüller, *Verantwortlichkeit von Deutschen und Tschechen*, *FAZ* - *Frankfurter Allgemeine Zeitung* - of March 28 1996, No 75, p 12). In accordance with the purpose of Article 3 paragraph 3 of Chapter Six Settlement Convention, this evaluation of the supreme court with respect to the legality of the Decree No 108 - and thus also the legality of its predecessors, including the Decree No 12 - has to be accepted by German courts, without thereby expressing an approval of the Czechoslovakian measures under the aspect of substantive law nor in particular under the aspect of international expropriation law.

dd)

Finally, both the intervening third party and the Defendant are part of the group of persons protected by Article 3 paragraph 3 of Chapter Six Settlement Convention.

It is true that pursuant to the wording of the provision the exclusion of German jurisdiction is restricted to claims and actions against persons who have acquired or transferred title to property on the basis of the measures referred to in paragraph 1 of this Article or against persons who have acted upon instructions of foreign governments. However, pursuant to the object and purpose of Article 3 paragraph 3 of Chapter Six Settlement Convention, German jurisdiction is already not admissible in a case where, by the judgment on the merits, the plaintiff intends to raise objections against measures specified under Article 3 paragraph 1 of Chapter Six Settlement Convention (*BGH* - Federal Court of Justice - 32, 170 *et seqq*). The designated purpose of the provision excludes the possibility to review under substantive law the acquisition of ownership and thus the validity of the confiscation in order to define the scope of the provision's applicability. Consequently, the exclusion of German jurisdiction is already justified by the circumstance that the intervening third party invokes the transfer of title to property of the painting at issue to the Czechoslovakian and now the Czech State as a result of the confiscation, and that, on the other side, the Defendant claims that his direct possession is derived from the presumptive transferee. By his claim to legal protection, the Plaintiff indirectly demands the substantive non-recognition by a German court of the confiscation executed with respect to the painting at issue at that time. However, it is exactly this kind of judicial review and evaluation of the lawfulness of the confiscation that is to be prevented by the purpose of the provision (*BGHZ* 32, 170, 173; *WM* - 1963, 81, 83; *WM* 1987, 153; Beitzke, *MDR* 1957, 277 *et seq*).

II.

The ancillary decisions with respect to this lawsuit result from Sections 97, 708 No 10, 711 *ZPO* (Code of Civil Procedure).

The value in dispute for the appellate procedure and at the same time the gravamen value for the Plaintiff: DM 500,000.00.

The pleading of the Plaintiff's authorised representatives dated July 8 1996 does not give rise to a reopening of the oral hearing.

Oehler Caliebe Eickmann-Pohl

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THIS IS TO CERTIFY THAT the above is a complete and correct translation of the German original, which was presented to me as a copy of the original document. The translation comprises a total of 25 pages.

Düsseldorf,
November 28 1999

C. Grunewald

(Cornelia Grunewald)
Commissioned translator
for the English Language
in the District of the
*Oberlandesgericht*
(Court of Appeal)
Düsseldorf

## Annex 30

# DECISION OF THE FEDERAL COURT OF JUSTICE OF GERMANY OF 25 SEPTEMBER 1997 (REF. NO. II ZR 213/96)

Translation of the German Original

Certified Copy

# BUNDESGERICHTSHOF
(FEDERAL COURT OF JUSTICE)

## DECISION

II ZR 213/96

(Stamp:) received
September 30 1997
Dr. Brändel ... Jordan

of

September 25 1997

In the lawsuit

of his Serene Reigning Highness Prince Hans Adam II of Liechtenstein,
Vaduz Castle, Vaduz/Liechtenstein,

Plaintiff and Appellant

- Authorised legal representatives: *Rechtsanwälte* (Lawyers) Dr. Brändel und Jordan -

(Stamp:)

| | | |
|---|---|---|
| time limit: | (in handwriting:) | for Constitutional Complaint |
| expiry: | | October 30 1997 |
| preliminary date: | | October 23 1997 |
| | noted: (illegible) | |

versus

the Municipality of Cologne, represented by the *Oberstadtdirektor* (chief administrative officer of the municipality), Town Hall, Cologne

Defendant and Appellee

| | |
|---|---|
| - Authorised legal representatives Second Instance: | *Rechtsanwälte* (Lawyers) Deringer and Colleagues, Heumarkt 14, Cologne - |

intervening third party for the Defendant:
Historical Monuments Office in Brno, Radnicka 2, Brno/Czech Republic

| | |
|---|---|
| - Authorised legal representatives: | *Rechtsanwalt* (Lawyer) Prof. Dr. Krämer - |

On September 25 1997, the *II. Zivilsenat des Bundesgerichtshofes* (Second Division for Civil Matters of the Federal Court of Justice) decided by the presiding judge Röhricht and the judges Dr. Hesselberger, Dr. Kapsa, Dr. Kurzwelly and Kraemer

and held as follows:

> The Appellant's appeal against the judgment of the *22. Zivilsenat des Oberlandgerichts Köln* (22nd Division for Civil Matters of the Court of Appeal Cologne) of July 9 1996 is not accepted.
>
> The legal issue lacks fundamental importance. In a final analysis, the appeal does not have a prospect of success.
>
> The costs of the appellate proceedings shall be recoverable from the Plaintiff (sec 97 *ZPO* - *Zivilprozeßordnung* (Code of Civil Procedure)) including the costs of the intervening third party (sec 100 paragraph 1 *ZPO*).
>
> Value in dispute: DM 500,000.00

Röhricht Dr. Hesselberger Dr. Kapsa

Dr. Kurzwelly Kraemer

(Seal:) *BUNDESGERICHTSHOF*
(Federal Court of Justice)

(Federal Eagle)
13

executed:
(signed signature, illegible)
(Stamp:) (Boppel)
*Justizamtsinspektor*
(judicial officer)
in his capacity as Registrar of the Registry of the Federal Court of Justice

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THIS IS TO CERTIFY THAT the above is a complete and correct translation of the German original, which was presented to me as a copy of the original document. The translation comprises a total of 3 pages.

Düsseldorf,
September 28 1999

C. Grunewald

(Cornelia Grunewald)
Commissioned translator
for the English Language
in the District of the
*Oberlandesgericht*
(Court of Appeal)
Düsseldorf

Cornelia Grunewald Dipl. Übers.
Für den Bezirk des OLG Düsseldorf ermächtigte Übersetzerin der englischen und französischen Sprache
Humboldtstr. 55, 40237 Düsseldorf

## Annex 31

## INTERLOCUTORY ORDER OF THE FEDERAL CONSTITUTIONAL COURT OF GERMANY OF 26 NOVEMBER 1997 (REF. NO. 2 BVR 1981/97)

Translation of the German Original

Executed copy

***BUNDESVERFASSUNGSGERICHT***
(Stamp:)
(Federal Constitutional Court)
- 2 BvR 1981/97 -

BRUCKHAUS WESTRICK STEGEMANN
RECHTSANWÄLTE
(illegible)
**28 NOVEMBER 1997**
(particulars for internal office organisation)

**(State emblem of the Federal Republic of Germany: Eagle)**

## IN THE NAME OF THE PEOPLE

**In the proceedings**

**concerning**

**the constitutional complaint**

of
Prince Hans Adam II of Liechtenstein,
Vaduz Castle, Vaduz

- authorised legal representatives: *Rechtsanwälte* (Lawyers) Dr. Werner Bruckhaus and colleagues, Freiligrathstraße 1
Düsseldorf

versus a) the decision of the *Bundesgerichtshof* (Federal Court of Justice) of September 25 1997
- II ZR 213/96 -,
b) the judgment of the *Oberlandesgericht Köln* (Court of Appeal Cologne) of July 9 1996
- 22 U 215/95 -,
c) the judgment of the *Landgericht Köln* (Regional Court Cologne) of October 10 1995
- 5 O 182/92 -

**here:** Motion for an interlocutory order the *3. Kammer des Zweiten Senats des Bundesverfassungsgerichts* (Third Section of the Second Division of the Federal Constitutional Court) decided unanimously on 26 November 1997

through the Judge President Limbach,
the Judge Graßhof,
the Judge Kirchhof

pursuant to Section 32 para 1 in conjunction with Section 93d para 2 *BVerfGG - Gesetz über das Bundesverfassungsgericht* (Federal Constitutional Court Act) - as amended in accordance with the publication of 11 August 1993 (*BGBl* (Federal Law Gazette) I page 1473):

> The proceedings pending before the *Landgericht Köln* (Regional Court Cologne) - Ref. No. 5 O 388/91) for cancellation of the interlocutory injunction of 11 November 1991 will be stayed until the decision of the *Bundesverfassungsgericht* (Federal Constitutional Court) in the proceedings 2 BvR 1981/97, but at the latest until 31 January 1998.

## Reasons for the decision:

In the basic proceedings through all stages of appeal, the Appellant unsuccessfully claimed restitution of a painting which has been sequestrated in the meantime in accordance with an interlocutory injunction of the *Landgericht* (Regional Court). The *Landgericht* has now fixed the date for an oral hearing for 2 December 1997, and it is to be expected that this interlocutory injunction will be cancelled at the oral hearing. The *Bundesverfassungsgericht* (Federal Constitutional Court) is not in a position to make a final decision with respect to the constitutional complaint in the remaining period of time. Irrespective of the decision to be made as to the merits of the case, it is therefore necessary to pass an interlocutory order pursuant to Sections 32, 93d para 2 *BVerfGG* solely on the grounds of balancing interests. If we assume that that such an interlocutory order is not passed and that it turns out later that the constitutional complaint is founded, then - according to the Applicant's explanations - upon cancellation of sequestration, the painting will be returned to the custody of a foreign State who would definitely refuse to return the painting on the basis of the legal opinion held by that State. However, in the event that the interlocutory order is actually passed, but the constitutional complaint is unsuccessful in the end, then the consequences would not nearly be of such a serious nature. While the painting would in fact remain in the bailiff's custody in the meantime, it could then be returned to the Defendant in the basic proceedings.

Limbach Graßhof Kirchhof

## Annex 32

# DECISION OF THE FEDERAL CONSTITUTIONAL COURT OF GERMANY OF 28 JANUARY 1998 (REF. NO. 2 BVR 1981/97)

Translation of the German Original

Executed copy

***BUNDESVERFASSUNGSGERICHT***
(Federal Constitutional Court)
- 2 BvR 1981/97 -

(Stamp:)
BRUCKHAUS WESTRICK HELLER LÖBER
RECHTSANWÄLTE - STEUERBERATER
Postfach 10 17 43 Freiligrathstraße 1
D-40008 Düsseldorf D-40479 Düsseldorf
**FEBRUARY 2 1998**
(Abbreviation in handwriting illegible)
(particulars for internal office organisation)

**In the proceedings**

**concerning**

**the constitutional complaint**

of
Prince Hans Adam II of Liechtenstein,
Vaduz Castle, Vaduz

- authorised legal representatives: *Rechtsanwälte* (Lawyers) Dr. Werner Bruckhaus and collegues, Freiligrathstraße 1
Düsseldorf

versus a) the decision of the *Bundesgerichtshof* (Federal Court of Justice) of September 25 1997 - II ZR 213/96 -,
b) the judgment of the *Oberlandesgericht Köln* (Court of Appeal Cologne) of July 9 1996 - 22 U 215/95 -,
c) the judgment of the *Landgericht Köln* (Regional Court Cologne) of October 10 1995 - 5 O 182/92 -

the *3. Kammer des Zweiten Senats des Bundeverfassungsgerichts* (Third Section of the Second Division of the Federal Constitutional Court) has decided unanimously on January 28 1998
through the Judge President Limbach,
the Judge Graßhof,
the Judge Kirchhof

pursuant to Section 93b in conjunction with 93a *BVerfGG* - *Gesetz über das Bundesverfassungsgericht* - (Federal Constitutional Court Act) as amended in accordance with the publication of August 11 1993 (*BGBl* (Federal Law Gazette) I page 1473):

Rechtsanwälte
Dr. Werner Bruckhaus and collegues
Freiligrathstraße 1
40479 Düsseldorf

Ref: GVPr/Gl/Gu

The constitutional complaint is not accepted for decision.

## Reasons for the decision:

The constitutional complaint concerns the ban on legal actions in accordance with Article 3 paragraph 1 and 3 of Chapter Six Settlement Convention (Convention on the Settlement of Matters Arising out of the War and the Occupation as amended by Schedule IV to the Protocol on the Termination of the Occupation Regime in the Federal Republic of Germany, signed at Paris on October 23 1954; *BGBl. - Bundesgesetzblatt* - (Federal Law Gazette) 1955 II, p 405).In accordance with this provision, it is not possible to raise claims in Germany on the grounds of specific measures taken against Germany in connection with World War II

I.

After the Second World War, Czechoslovakia expropriated assets located on its national territory and owned by the Appellant's father who was the Head of State of Liechtenstein at that time. The reason given for this measure was the fact that, independant of his citizenship, the Appellant's father was of German nationality. Affected by the expropriation was, *inter alia*, a painting having a value of DM 500,000. This painting having been temporarily brought to Germany as a loan for a short time, the Appellant filed a claim for return with German courts. The civil courts dismissed the claim as inadmissible pursuant to Article 3 paragraph 3 of Chapter Six Settlement Convention. They argued that this provision has continued to remain in force pursuant to paragraph 3 of the Agreement of September 27/28 1990 with respect to the Convention on the Relations between the Three Powers and the Federal Republic of Germany (amended version) and the Convention on the Settlement of Matters Arising out of the War and the Occupation (amended version) (Federal Law Gazette 1990 II, page 1386; in the following referred to as: Exchange of Notes). The courts further argued that it was in fact true that Article 3 paragraph 1 and 3 of Chapter Six Settlement Convention only concerned measures against German external assets. However, it was sufficient in this respect that the assets were confiscated as German assets. And the essential point was that German courts did not have to decide on the legality of this classification as German assets.

II.

There are no reasons to accept the constitutional complaint pursuant to Section 93a paragraph 2 *BVerfGG* - *Gesetz über das Bundesverfassungsgericht* - (Federal Constitutional Court Act). The constitutional complaint has no prospects of success.

1. In accordance with the Appellant's point of view, the decisions violate three general rules of international law within the meaning of Article 25 *GG* ( - *Grundgesetz* - (German Basic Law)) pursuant to which - first - it is not permitted that victors of a war confiscate assets of nationals of neutral States; - second - international treaties to the detriment of third States are prohibited; and - third - the question of a natural person's citizenship is to be answered exclusively in accordance with the law of the State granting the citizenship. It is argued that the civil courts refrained from submitting the case to the Federal Constitutional Court - as would have been required pursuant to Article 100 paragraph 2 *GG*, thereby infringing the Appellant's right under Article 101 paragraph 1 sentence 2 *GG*.

However, for the decisions of the civil courts it did not matter whether or not such rules of customary international law do exist. The alleged rules with respect to the confiscation of neutral property and the determination of a person's citizenship concern the question of whether the expropriation effected by Czechoslovakia was lawful on the merits; however, this is exactly the question on which the civil courts have not given their opinion. And pursuant to international law, the courts were not obligated to do so (cf in this context Verdross/Simma, *Universelles Völkerrecht*, 3rd ed, 1984, p 778; Seidl-Hohenveldern, *Völkerrecht*, 9th ed, 1997, p 274; cf also *BVerfGE* - *Entscheidungen des Bundesverfassungsgerichts* - (Decisions of the Federal Constitutional Court) 84, 90 <123f>).

To the extent that, in accordance with the civil courts' point of view, the expropriation represents a measure effected against German external assets within the meaning of Article 3 paragraph 1 of Chapter Six Settlement Convention, this expressly excludes an independent judgment of the Appellant's father's citizenship. On the contrary, on the grounds of a purpose-oriented interpretation, the wording "measures carried out with regard to German external assets" means all such measures as were directed against German assets in accordance with the intention of the acting State (cf *BGHZ - Amtliche Entscheidungssammlung des Bundesgerichtshofs in Zivilsachen-* (Official Collection of Civil Decisions by the Federal Court of Justice) 32, 170 <172f>). With respect to this interpretation of the civil courts, there is no cause for complaint from a constitutional point of view.

Nor does the ban on litigation represent a treaty to the detriment of Liechtenstein, because it creates a contractual duty for the Federal Republic of Germany and its courts only, but not for Liechtenstein.

2. The Federal Constitutional Court has already decided that the waiver of jurisdiction, as laid down in the Settlement Convention, is not contrary to Article 14 *GG*. In any case, the Federal Republic of Germany is not bound by Article 14 *GG*, because the clauses and the conclusion of the treaty as a whole serve to settle transactions dating from the time prior to the creation of German Basic Law (*BVerfGE* 41, 126, <168>; cf also *BVerfGE* 84, 90 <122>).

3. There is no apparent reason to assume that the decisions of the civil courts are absolutely untenable and therefore contrary to Article 3 paragraph 1 *GG* (cf *BVerfGE* 4, 1 <7>).

4. An infringement of Article 2 paragraph 1 in conjunction with Article 59 paragraph 2 sentence 1 *GG* does not have to be considered in this context for the mere reason that Article 3 paragraph 1 and 3 of Chapter Six Settlement Convention have domestic legal force. Contrary to the Appellant's opinion, paragraph 3 of the Exchange of Notes did not require approval in the form of a "*Transformationsgesetz*" pursuant to Article 59 paragraph 2 sentence 1 *GG*. In

paragraph 3, the Exchange of Notes merely confirms and clarifies that an already existing regulation of international law shall continue.

Article 3 paragraph 1 and 3 of Chapter Six Settlement Convention has not already been abrogated by Article 7 Two-Plus-Four Treaty. Article 7 paragraph 1 Two-Plus-Four Treaty only concerns agreements between the Four Powers, but not agreements between the Three Western Powers, such as the Settlement Convention. Article 7 paragraph 2 Two-Plus-Four Treaty merely draws the conclusion resulting therefrom "accordingly". Germany regained full sovereignty over its internal and external affairs as a consequence of the discontinued responsibility of the Four Powers with respect to Berlin and Germany as a whole and the agreements, decisions and practices connected therewith. This does not affect its commitment to international treaties with the Three Western Powers.

This is also in accordance with the legal opinion of the Federal Republic of Germany and the Three Western Powers themselves, who - otherwise - would not have had to agree separately in the Exchange of Notes on the suspension of parts of the Settlement Convention. Considering the close historical, political and temporal relation between the Exchange of Notes and the Two-Plus-Four Treaty, and the close relation as regards their content, it would not be justified to assume that, on the one side, by participating in the Two-Plus-Four Treaty, the Three Powers and the Federal Republic of Germany intended to agree on the unconditional abrogation of the Settlement Convention, while, on the other side, parallel thereto and in direct connection to the contents of the regulations concerned, they contradicted themselves and revived parts of the Settlement Convention by paragraph 3 of the Exchange of Notes. Thus, also with respect to Article 7 paragraph 2 of the Two-Plus-Four Treaty, paragraph 3 of the Exchange of Notes did in fact not create a new obligation under an international treaty for the Federal Republic of Germany.

This decision is unappealable.

Limbach Graßhof Kirchhof

(Seal:) ***Bundesverfassungsgericht***

**Federal Eagle**
**3**

(Stamp:) Executed
(signed signature, illegible)

*Regierungssekretärin* (court clerk) as Registrar of the Registry of the *Bundesverfassungsgericht*

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THIS IS TO CERTIFY THAT the above is a complete and correct translation of the German original, which was presented to me as a copy of the original document. The translation comprises a total of 6 pages.

Düsseldorf,
September 28 1999

C. Grunewald

(Cornelia Grunewald)
Commissioned translator
for the English Language
in the District of the
*Oberlandesgericht*
(Court of Appeal)
Düsseldorf

Cornelia Grunewald Dipl. Übers.
Für den Bezirk des OLG Düsseldorf ermächtigte Übersetzerin der englischen und französischen Sprache
Humboldtstr. 55, 40237 Düsseldorf

THIS IS TO CERTIFY that all translations of the German and Czech originals contained in this volume are complete and correct.

Dr. Alexander Goepfert
Agent for the Principality of Liechtenstein
28 March 2002

## CASE CONCERNING CERTAIN PROPERTY
## (LIECHTENSTEIN v. GERMANY)

# ANNEXES
# TO THE
# MEMORIAL OF THE PRINCIPALITY OF LIECHTENSTEIN

## VOLUME III
Annexes 33 to 47

28 MARCH 2002

## Annex 33

# STATEMENT OF THE REIGNING PRINCE HANS ADAM II OF LIECHTENSTEIN, REPRESENTED BY THE LAW FIRM WIRTZ & KRANEIS, BEFORE THE REGIONAL COURT OF COLOGNE OF 11 JULY 1995 (*REIGNING PRINCE HANS ADAM II OF LIECHTENSTEIN ./. MUNICIPALITY OF COLOGNE*, REF. NO. 5 O 182/92)

Translation of the German Original

of page 11, para. 1-4 of the statement of the Reigning Prince Hans Adam II of Liechtenstein, represented by the Law Firm Wirtz & Kranies, before the Regional Court of Cologne of 11 July 1995 (Reigning Prince Hans Adam II of Liechtenstein ./. Municipality of Cologne, No. 5 O 182/92).

These subjectively biased and unfortunately still untrue statements of the intervening party in addition oblige us to make the following procedural reference:

The party intervening may present its statement of facts and make declarations only insofar as they do not contradict the declarations of the original party pursuant to sec. 67 ZPO. The defendant, as the original party, however, has not made any statements regarding these allegations of the intervening party.

**The defendant, the City of Cologne, is hereby requested to declare whether and, if so, in how far it adopts the statement of the intervening party that the Prince of Liechtenstein is a person of German nationality.**

This is because, if the defendant does not adopt or contradict this statement, as the case may be, it is deemed to be insignificant in the final analysis. The plaintiff simply cannot imagine that the City of Cologne will seriously repeat this allegation of the Czech Government.

## Annex 34

# STATEMENT OF THE HISTORICAL MONUMENTS OFFICE IN BRNO, REPRESENTED BY THE LAW FIRM UHLENBRUCH, BARTHOLOMÉ & DELL, BEFORE THE REGIONAL COURT OF COLOGNE OF 8 MARCH 1995 (*REIGNING PRINCE HANS ADAM II OF LIECHTENSTEIN ./. MUNICIPALITY OF COLOGNE*, REF. NO. 5 O 182/92)

## Translation of the German Original

of page 24 and 25 of the Statement of the Historical Monuments Office in Brno represented by the Law Firm Uhlenbruch, Bartholomé & Dell, before the Regional Court of Cologne of 8 March 1995 (Reigning Prince Hans Adam II of Liechtenstein ./. Municipality of Cologne (Ref. No. 5 O 182/92)

The Higher Administrative Court stated in its findings Boh. 4173:

> "Nationality can be described as a membership of a tribe, the main external feature of which usually is the mother tongue."

According to the Masaryk dictionary, Part IV, page 465, the entry "Lichtenstejnsko" – in German, Liechtenstein – says that the inhabitants are **catholic Germans**.

In Part V, page 95, the entry Nemci/German says that the German nation is formed primarily of a coherent core of 63,000,000 people in the German Reich including the Saarland in 1925, 95% Germans in Austria, 6.2 million people, and with 11,000 Germans in **Liechtenstein**.

Neither in the first complaint nor in the complaint before the Supreme Administrative Court, did the plaintiff assert to belong to another nation.

Neither has the contrary evidence been produced that he belonged to another nation.

This applies *mutatis mutandis* also to the present plaintiff.

It was generally known then, and remains the case, that Liechtenstein is of German nationality in this sense.

The decree no. 12/1945 GBl. proceeds from this ethnic principle when defining the term nationality and determines nationality within the sense of membership of a tribe, of national traditions, as it is expressly set forth in sec. 1 (1) a, pursuant to which "the citizenship is not decisive".

So, this is an objective criterion.

Therefore, also the term **national group** in sec. 2 (1) of the decree may not be interpreted otherwise than within the **ethnic sense**.

Thus, not only the Reich Germans were intended to be included, since this would have been contrary to the wording of sec. 1 (1) a of the decree – "all persons … irrespective of their citizenship" -, but all Germans, all Hungarians.

Hence, the District National Committee of Olmütz correctly stated that the plaintiff, who as a member of a national group within the meaning of sec. 2 (1) of the decree no. 12/1945 GBl. was a person of German nationality, which was generally known, thus was one of those persons whose property could be expropriated *ex lege* pursuant to sec. 1 (1) a of the decree no. 12/1945 GBl.

The decisions of both the Czechoslovakian administrative authorities and of the Supreme Administrative Court were thus in accordance with Czechoslovakian law.

The legal opinion of Prof. Weyr of 20 August 1945 does not change this. Irrespective of the fact that it has been drafted at the request of the then plaintiff, and therefore was a legal opinion of one party, Prof. Weyr is insofar alone in holding that legal opinion.

## Annex 35

# AIDE MEMOIRE OF THE PRINCIPALITY OF LIECHTENSTEIN TO THE GERMAN AMBASSADOR HEYKEN OF 4 OCTOBER 1995

## Translation of the German Original

### Aide Memoire

In 1945, the property of all Liechtenstein citizens, including extensive property owned by the then reigning Prince of Liechtenstein as Head of State, was confiscated without compensation by the Government of Czechoslovakia under President Benes. Stating the reasons for their measures, the Czechoslovak Government invoked the provision that all Liechtenstein citizens had to be regarded as "Germans" within the meaning of the Decree No 12 of 21 June 1945.

At the time, the then Government of Liechtenstein and the Prince of Liechtenstein demonstrated against such confirmations both by diplomatic and legal means, but without success. Initial stages of an attempt to solve this problem which weighed on the relationship between Liechtenstein and the then State of Czechoslovakia were destroyed when the Communist Party seized power.

Upon the return of a democratically elected Government in Czechoslovakia, the Liechtenstein Government renewed Liechtenstein claims for restitution – or at least compensation. In principal acknowledgment of the injustices suffered under the communist regime, restitutions were only effected for confiscations and expropriations carried out after 1948. All expropriation measures carried out on the basis of the so-called Presidential Decrees of President Benes were not called into question.

On the occasion of an exhibition about Dutch painting in the Walraff-Richartz-Museum in Cologne, the reigning Prince of Liechtenstein, Hans-Adam II, was surprised to find that a painting shown there had belonged to the princely property and was presumed to be lost since 1945, while it had in fact been confiscated by the Czechoslovakian Government on the basis of the Presidential Decree No 12. By the agency of his German legal representatives, the Prince obtained an order against the Municipality of Cologne – possessing the painting at the time in its capacity as the legal entity responsible for the Walraff-Richartz-Museum - to have the painting kept in the custody of a sequestrator. In the proceedings on the merits of the case, in which the Municipality of Cologne as possessor of the painting acted as defendant, the Czech Republic intervened as a third party on the side of the Municipality of Cologne, but refused to take the place of the Municipality of Cologne in the proceedings. Hence, the latter has remained principal party of this lawsuit.

In the course of the proceedings, the Czech Government repeated its assertion that Liechtenstein was part of the German nation and that all Liechtenstein citizens, ie inclusive of the Head of State of the Principality of Liechtenstein, have to be regarded as Germans.

During the proceedings, the Municipality of Cologne did not counter this legal opinion presented by the third party intervening on the side of Cologne, and hence such opinion is attributable to the Municipality of Cologne in accordance with the German Code of Civil Procedure. Considering that, on the other side, the Municipality of Cologne as a public corporation is part of the Federal Republic of Germany and – as far as questions regarding the legality of administrative activities are concerned – under the authority of the Land North-Rhine Westphalia, the following questions arise:

1. Does the position indirectly taken by the Municipality of Cologne correspond to the position taken by the Federal Republic of Germany?

2. In the event that the position of the Municipality of Cologne does not correspond to the point of view supported by the Government of the Federal Republic of Germany, what possible means are available to influence the Municipality of Cologne to the effect that the latter will refrain from making such declarations of a legally binding nature which are bound to have far-reaching consequences for the relationship between the Principality of Liechtenstein and the Federal Republic of Germany also with respect to the reparation issue, and in order to restore the Federal Republic of Germany's

consistent attitude vis-à-vis the Principality of Liechtenstein with regard
affairs?

4 October 1995

## **Annex 36**

## MEMORIAL OF THE AGENT OF THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY SUBMITTED TO THE EUROPEAN COURT OF HUMAN RIGHTS OF 29 OCTOBER 1999

**The Agent of the Government**
**of the Federal Republic of Germany**

**L'Agent du Gouvernement**
**de la République Fédérale d'Allemagne**

**Die Verfahrensbevollmächtigte**
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IV M - 9470/2 – 4 E (1951) – 6 A 0003/99

29 October 1999

European Court
of Human Rights
Council of Europe

F-67075 Strasbourg - CEDEX

Subject: Application no. 42527/98
Prince Hans-Adam II of Liechtenstein v. the Federal Republic of Germany

Reference: Letters from the Registrar of the Fourth Chamber of the Court dated 1 July 19
– ECHR – SL 10Gbis CW/nl – and of 23. July 1999 – ECHR – SL 18 CW/nl –

## A. Subject-matter of the case

In 1946, the Czechoslovak Republic expropriated the property belonging to the then Prince of Liechtenstein, the Applicant's father, which was located on its national territory. The confiscated assets also included a painting which was put on display in an exhibition in Cologne in 1996. The Applicant filed an action for the painting to be restored to him as his expropriated father's heir. This action was dismissed as inadmissible by the German courts, who referred to Article 3 para. 3 of Chapter Six of the Convention on the Settlement of Matters Arising out of the War and the Occupation. The following violations of rights are complained of in the Application:

- it is claimed that Article 6 para. 1 of the Convention has been violated in the refusal of recourse to the courts. It is stated that although the Applicant had a civil law entitlement to ownership, the German courts disposed of their international jurisdiction by referring to a duty incumbent on them to apply provisions of occupation law.

- it is claimed that Article 6 para. 1 of the Convention has been violated with respect to the right to a "fair hearing". It is stated that in the proceedings on the constitutional complaint filed by the Applicant, the Federal Constitutional Court departed from the opinions of the court instances as well as from the participants' submissions with respect to a crucial point, without granting an opportunity for observations to be submitted in this respect.

- it is claimed that Article 1 of Protocol No. 1 to the Convention has been violated, since the Applicant had been wrongfully deprived, by the City of Cologne and the German courts, of his ownership of the painting which is the subject-matter of the dispute.

- it is claimed that Article 14 of the Convention in conjunction with Article 1 para. 1 of Protocol No. 1 to the Convention has been violated, as the Federal Republic of Germany refused the Applicant, unlike German nationals, compensation for the deprivation of his assets, which had been considered to be German property.

## Facts of the case

The Applicant's late father was the owner of the painting "*Szene an einem römischen Kalkofen*" (or "*Der große Kalkofen*") by Pieter van Laer. The painting had belonged to the family's art collection since at least 1767. Up to the end of the second world war, the painting was located in one of the family's castles on the territory of the Czech Republic.

In 1946, the former Czechoslovakia confiscated property belonging to the Applicant's father which was located on its territory, including the painting in question. The basis for the confiscation was the decree of the President of the Republic of 21 June 1945 on the confiscation and accelerated allocation of agricultural property of Germans, Hungarians and of those having committed treason or acted as enemies of the Czech and Slovak people ("Benes Decree No.12"). The relevant provisions of this decree are worded as follows:

"Section 1

(1) With immediate effect and without compensation, agricultural property shall be expropriated, for the purposes of land reform, which is in the ownership of:

a) all persons of German and Hungarian nationality irrespective of citizenship status,

b) those who have committed treason against or acted as enemies of the Republic, regardless of which nationality or citizenship they possess, who committed such acts of hostility predominantly during the crisis and war in the years from 1938 to 1945, ...

Section 2

(1) Those persons shall be considered to be of German or Hungarian nationality who, in any census since 1929, declared that they were of German or Hungarian nationality, or who became members of national groups, formations or political parties which were made up of persons of German or Hungarian nationality. ......

Section 4

Agricultural property (section 1 subsection 1) shall mean: land used for agriculture and forestry, buildings and installations belonging to such land, the operating units used for agricultural and forestry management, as well as moveable fixtures (livestock and equipment) and all rights attached to the ownership of the confiscated property and its constituent parts."

II. The Applicant's father filed complaints with Bratislava Administrative Court against the order issued by the State National Committee in Brno on 16 January 1946 on the expropriation of his agricultural property. The former dismissed these complaints in its judgment of 21 November 1951. The Administrative Court stated the following *inter alia* in its reasons:

"On the merits as such, the defendant agency has come to the conclusion that the Applicant is a person of German nationality within the meaning of the provision in Section 1a of the decree, on the basis of the finding that this was, and is, generally known. The defence for the complaint which is directed against this finding is restricted solely to the reservation that this finding has no basis in the files and that as a result of this shortcoming, it was not necessary to deal with this finding in greater detail. However, with respect to the reason for objection, the complaint is mistaken.

Pursuant to section 48 subsection 1 of government ordinance no. 8/28 Gbl (VWO), facts which are general knowledge do not require any evidence, and thus not even evidence documented in the administrative files; however, counter evidence against official findings relating to general knowledge of a specific fact is admissible. Accordingly, the complaint would therefore have to have contended that the matter in question was not general knowledge and that the complainant would have been in a position to bring counter evidence as well as to have stated in which form.

However, the complainant asserts neither the one nor the other."

III. In 1991, the painting was loaned to the City of Cologne by Brno Historical Monuments Office and shown in an exhibition. Due to a provisional order of Cologne Regional Court of 11 November 1991, the painting was sequestrated on 17 December 1991.

IV. At the beginning of 1992 the Applicant filed an action against the City of Cologne with Cologne Regional Court. He demanded that he be granted the return of the painting by a bailiff. He submitted that, as his father's heir, he had become the owner of the painting. He maintained that the painting had not been subject to Czechoslovak expropriation measures, or that such measures had at least been of no effect or of no consequence due to the violation of the *ordre public* of the Federal Republic of Germany.

In the proceedings, Brno Historical Monuments Office intervened in the action as a third party in support of the defendant. The defendant and the intervenor were of the opinion that the father of the party filing the action had lost his ownership of the painting as a result of the expropriation measures which had taken place in Czechoslovakia, and that the lawfulness of the expropriation had been established in the judgment of Bratislava Administrative Court.

The Regional Court dismissed the action in its judgment of 10 October 1995. The Court stated in its reasons that the action had been inadmissible because there was no recourse to the German courts. This was laid down in Article 3 of Chapter Six of the Convention on the Settlement of Matters Arising out of the War and the Occupation (Settlement Convention) of 23 October 1954 (BGBl. 1955 II p. 405), the relevant provisions of which are worded as follows:

"Article 3

1. The Federal Republic shall in the future raise no objections against the measures which have been, or will be, carried out with regard to German external assets or other property, seized for the purpose or reparation or restitution, or as a result of the state of

war, or on the basis of agreements concluded, or to be concluded, by the Three Powers with other Allied countries, neutral countries or former allies of Germany.

……

3. No claim or action shall be admissible against persons who shall have acquired or transferred title to property on the basis of the measures referred to in paragraph 1 and 2 of this Article, or against international organizations, foreign governments or persons who have acted upon instructions of such organizations or governments.

### Article 5

The Federal Republic shall ensure that the former owners of property seized pursuant to the measures referred to in Articles 2 and 3 of this Chapter shall be compensated."

The Settlement Convention is an agreement between the United States of America, the United Kingdom of Great Britain and Northern Ireland and the French Republic on the one hand, and the Federal Republic of Germany on the other. It is part of an extensive context, namely as a legally independent part of the "Bonn Conventions", which form a political whole. They are listed in the Paris Protocol of 23 October 1954 and entered into force simultaneously with the latter (cf. BGBl. 1955 II p. 303 et seqq. with respect to the Bonn Conventions). The main purpose of these treaties was to terminate the occupation regime in the Federal Republic of Germany, to lay down the occupation law which was to continue to apply and to regulate the new relations between the Federal Republic of Germany and the United States of America, the United Kingdom of Great Britain and Northern Ireland and the French Republic. The Settlement Convention contains *inter alia* favourable provisions applicable to a specific group of states which also includes the former Czechoslovakia.

The Applicant filed an appeal on points of fact and law against the judgment of the Regional Court. In particular he was of the opinion that the Settlement Convention as a whole had been rescinded by the Treaty on the Final Settlement with respect to Germany of 12 September 1990 ("Two plus Four Treaty", BGBl. 1990 II p. 1317). He submitted that an exchange of notes between the government of the Federal Republic of Germany and the governments of the French Republic, the United States of America and the United Kingdom of Great Britain and Northern Ireland of 27 and 28 September 1990 (BGBl. 1990 II p. 1386) had not been able to effect the continued existence of Article 3 para. 3 of Chapter Six of the Settlement Convention since this had not been approved and ratified by the competent legislative bodies in the Federal Republic of Germany. He was also of the opinion that the requirements of Article 3 para. 3 of Chapter Six of the Settlement Convention had not been fulfilled.

In the agreement concluded in the exchange of notes it is stated *inter alia*:

"3. The following provisions of the Settlement Convention shall, however, remain in force:

......

Chapter Six:
Article 3, paragraphs 1 and 3
......"

Cologne Higher Regional Court dismissed the appeal on points of fact and law on 9 July 1986. The court stated that the action was inadmissible, and that German jurisdiction with respect to the claim asserted was excluded pursuant to Chapter six Article 3 para. 3 in conjunction with para. 1 of the Settlement Convention. This provision had not lost its legal force as a result of Article 7 of the Moscow Treaty on the Final Settlement with respect to Germany of 12 September 1990 (Two plus Four Treaty).

In Article 7 para. 1 first sentence of the Two plus Four Treaty, the victorious powers declared the termination of their rights and responsibilities relating to Berlin and to Germany as a whole. As a result of this, the corresponding, related quadripartite agreements were terminated pursuant to Article 7 para. 1 second sentence of the Two plus Four Treaty. The dissolution of the institutions of the Four Powers relating to Germany as a whole which was established in Article 7 para. 1 second sentence of the Two plus Four Treaty had been supplemented by paras. 2 and 3 of the Agreement between the Governments of the Federal Republic and the three Western Allies of 27 and 28 September 1990 relating to the Convention on Relations between the Three Powers and the Federal Republic of Germany as well as to the Convention on the Settlement of Matters Arising out of the War and the Occupation. Pursuant to para. 2 of this Agreement, the effect of the Settlement Convention was terminated with the exception of the individual provisions of the instrument stipulated in para. 3, which also included Chapter Six Article 3 paras. 1 and 3. This intergovernmental Agreement was effective without restriction both under international law and under constitutional law.

The requirements of Chapter Six Article 3 para. 3 of the Settlement Convention had been fulfilled in this case.

In accordance with the wish of the parties concluding the Convention, this provision was based on the objective of taking the procedural consequence, for the Federal

Republic and the private individuals concerned, of the "final and incontestable" nature of the legal position created as a result of the liquidation of German external assets by foreign countries for the purposes of reparation. The waiver of German jurisdiction declared in Chapter Six Article 3 para. 3 of the Settlement Convention was restricted to the factual acceptance of the legal situation created by the Allies without there being at the same time a waiver of the substantive law on which the action was based.

The exclusion of German jurisdiction had not violated the basic rights of the party bringing the action as laid down in Articles 14, 19 para. 4 or 101 of the Basic Law. Whilst it was true that the basic rights protected their subject from acts executed by a domestic authority, they did not, however, protect that subject from the exercise of foreign state authority abroad. As a result of this, there had been no obstacle to the domestic parliament – due to restraints of foreign policy – to excluding domestic legal protection against acts by a foreign sovereign power which violated basic rights, in order to attain a goal considered to be of a higher priority. In this context, Chapter Six Article 3 para. 3 of the Settlement Convention was aimed at preventing actions being brought which were directly or indirectly directed against the measure of seizure which had been taken on the basis of legislation of a country, favoured by this Convention, relating to enemy assets. The legal consequences of this provision were of a purely procedural law nature. The application of this provision in no way made any statement on the lawfulness or incontestability of the individual measures taken to liquidate German external assets on which the action was based.

The aim and purpose of Chapter Six Article 3 of the Settlement Convention was to be taken account of in the practical application of the provision to the extent that in evaluating the existence of its requirements, the law of the expropriating state on which the act of seizure was based was to be decisively taken into consideration. With respect to the provisions concerning reparation payments, the Settlement Convention had an effect favourable to the member countries of the Paris Reparation Agreement, and therefore also to Czechoslovakia. According to the judgment of the Federal Court of Justice of 11 April 1960 (BGHZ 32, 170) in particular, the fact that the property was seized as German property was sufficient to warrant the application of the provision in Chapter Six Article 3 of the Settlement Convention. In this case, the Federal Court of Justice had had to rule on an action brought by a foreign plaintiff. He had submitted that the subject matter of Article 3 para. 1 of Chapter Six of the Settlement Convention were measures which were directed against German property within the meaning of legislation relating to the enemy of the country which had executed the confiscation;

the decision on whether the property seized under this legislation was German or foreign assets in an individual case was to be made exclusively by the country which had seized the property.

In its ruling, the panel refrained from making any evaluation of the confiscation which had been made at the time. Alone the classification at the time by the competent Czechoslovak authorities and Bratislava Administrative Court as confiscation justified the qualification as a measure against German external assets within the meaning of Chapter Six Article 3 para. 3 in conjunction with para. 1 of the Settlement Convention.

There was no doubt as to the effectiveness of the seizure of the painting in dispute. The requirement in this respect, in accordance with previous decisions of the Federal Court of Justice, was solely that the seizure had actually been carried out, i.e. that it had been completed and that as a result of this the power of disposal held by the person previously entitled had in fact been removed. The question of whether an effective seizure within the meaning of Chapter Six Article 3 paras. 1 and 3 of the Settlement Convention existed could be assessed solely on the basis of the law of the state effecting seizure as the law determined to be applicable pursuant to German private international law as well.

On 25 September 1997 the Federal Court of Justice dismissed the Applicant's appeal on points of law only since the case was not of fundamental significance and under no circumstances did it offer a prospect of success.

On 28 January 1998 the 3rd Chamber of the Second Panel of the Federal Constitutional Court did not accept the Applicant's constitutional complaint for adjudication because it offered no prospect of success.

The Federal Constitutional Court was in particular of the opinion that, for the purposes of decisions of civil law courts, questions on the existence or non-existence of certain international law provisions on the expropriation of neutral assets or on the determination of citizenship were irrelevant. The provisions referred to concern solely the question of the lawfulness of the expropriation by Czechoslovakia in terms of substantive law, a matter on which the civil law courts had in fact not given an opinion. Neither had they been obliged to do so under international law. In the opinion of the civil law courts, to the extent that the expropriation constituted a measure against German external assets within the meaning of Chapter Six Article 3 para. 1 of the

Settlement Convention, this explicitly did not contain an independent assessment of the citizenship of the Applicant's father. On the contrary, based on a purpose-orientated interpretation, "measures carried out with regard to German external assets" was taken to mean all measures which in the intention of the state taking the action was directed against German property. From the point of view of constitutional law no objection can be made with respect to this interpretation.

Contrary to the Applicant's opinion, para. 3 of the exchange of notes of 27 and 28 September 1990 did not require a law granting consent pursuant to Article 59 para. 2 first sentence of the Basic Law. In para 3 of the exchange of notes it was merely confirmed, for the purpose of clarity, that an international law provision which was already in force at the time would continue to apply.

Chapter Six Article 3 paras. 1 and 3 of the Settlement Convention had not already been rescinded by Article 7 of the Two plus Four Treaty. Article 7 para. 1 of the Two plus Four Treaty only affected Agreements of the Four Powers, and not those made by the Three Powers, such as the Settlement Convention. This was also in conformity with the interpretation of the law by the Federal Republic of Germany and the Three Western Powers themselves, who would otherwise not have had to agree on the termination of parts of the Settlement Convention in the form of a separate exchange of notes. The assumption that the Three Powers and the Federal Republic of Germany on the one hand wanted to agree the complete abrogation of the Settlement Convention in their participation in the Two plus Four Treaty, but that they on the other hand contradicted themselves, as regards both time and content, and had parts of the Settlement Convention revived in para. 3 of the exchange of notes, did not do justice to the close historical and political connection, a connection which also exists with respect to the time and the content, between the exchange of notes and the Two plus Four Treaty.

## Legal Assessment

I consider the Application to be ill-founded.

### Article 6 para. 1 of the Convention with respect to the refusal of recourse to the courts (right of access to the courts)

The Commission and the Court confirm that there must be a right of access to the courts. In the determination of his civil rights and obligations, everyone must have the possibility open to him of a hearing before a court which satisfies the conditions of Article 6 of the Convention and in which provision is made for final adjudication on the merits. The Court has required that a control "by a judicial body that has full jurisdiction" take place (Judgments of 10 February 1983 in the Case of Albert and Le Compte, Series A, Vol. 58, § 29 and of 28 June 1990 in the Case of Obermeier, Series A, Vol. 179, § 70). In accordance with this, Article 6 para. 1 of the Convention ought, according to the case law of the Court, in principle to include the right to an examination of the case in terms of substantive law.

Pursuant to established case law, the right of access may, however, be subject to restrictions. The Court has stated the following in this respect:

The Court recalls that the right of access to the courts secured by Article 6 para. 1 is not absolute, but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State. In this respect, the Contracting States enjoy a certain margin of appreciation, although the final decision as to the observance of the Convention's requirements rests with the Court. It must be satisfied that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 para. 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (Judgments of 18 February 1999 in the Case of Waite and Kennedy, No. 26083/94, § 59; of 18 February 1999 in the Case of Beer and Regan, No. 28934/95, § 49; of 21 September 1994 in the Case of Fayed, Series A, Vol. 294, § 65).

Considered in the light of these principles, neither the exclusion of German jurisdiction, which was established in the Settlement Convention and was maintained in the Agreement of 27 and 28 September 1990, nor the interpretation by the German courts of the regulation made in the Settlement Convention violates Article 6 para. 1 of the Convention.

**1) Chapter Six Article 3 paras. 3 and 1 of the Settlement Convention in conjunction with the Agreement of 27 and 28 September 1990**

a) In this context it must be pointed out that seizures to which Article 3 of Chapter Six of the Settlement Convention refers, in particular the seizure of the painting in dispute as well, took place in the former Czechoslovakia in 1946, i.e. at a time when the Federal Republic of Germany did not yet even exist. At that time and also today, the Federal Republic of Germany did not and does not have any influence on the deprivation of rights of ownership or other rights in rem, nor on the organisation of property relations in the former Czechoslovakia and its successor states. The Settlement Convention and the Agreement of 27 and 28 September 1990 thus neither prejudiced nor affected power of disposal de facto. This is at least true for the far greater proportion of property, which remained on the territory of the former Czechoslovakia. The exclusion of German jurisdiction which was established in the Settlement Convention and maintained in the Agreement of 27 and 28 September 1990 thus does not affect the power of disposal of those concerned with respect to their property in the great majority of cases. The legal consequences of this provision are – as stated by Cologne Higher Regional Court – of a purely procedural law nature. The application of this provision in no way makes any statement on the lawfulness or incontestability of the individual measures taken to liquidate German external assets on which the action was based. In particular, this provision excludes German jurisdiction only, and not the filing of an action before a different court in a foreign country which may have jurisdiction.

Taking into consideration this initial situation, the right of access to these courts is permissibly limited by Article 6 of Chapter Six of the Settlement Convention. A statutory regulation and international obligation can typically only cover the usual course of events, without being able to make special provisions for extremely rare exceptional situations in individual cases – such as here, where an object was brought onto the territory of the Federal Republic of Germany on loan. Therefore, the provisions do not impair the right to seek recourse to the courts in such a way or to such an extent that the very essence of the right is impaired. This can be concluded alone from the fact that only access to the German courts is excluded, which generally could not de facto have returned rights of ownership or other rights in rem to those concerned. However, this can also be concluded from the fact that the regulation established in the Settlement Convention was necessary for the purpose of re-establishing the initially partial and later complete sovereignty of Germany and that therefore without it, no possibility would in any case have existed of ruling on actions of such a nature. The memorandum to the Settlement Convention (annex 4 to Bundestag printed paper [*Bundestags-Drucksache*] 1/3500 of 21 July 1952 states in this respect (pp. 54 to 56):

"As in the peace treaties which terminated the First World War, the victorious powers of the Second World War have, in the peace treaties of which six have so far been concluded, also had recourse to the private external assets of the conquered states which were located on their territory for the purposes of reparation. The same has been agreed by the big powers with respect to Germany in the Potsdam Agreement. The Control Council Ordinance No. 5 and AHC Law No. 63 were adopted for the purpose of implementing these agreements and 19 Allied Countries concluded the Paris Inter-Allied Reparation Agreement of 14 January 1946.

The use of German external assets for the purposes of reparation on the basis of international agreements and laws of the occupying powers had to be accepted as a hard fact. It was a matter of relaxing these international agreements and laws where possible. This ought to have been for the most part achieved ......

The recognition of the inter-allied treaties and the laws of the occupying powers was avoided in the Convention. The Federal Republic merely stated that it would not in the future raise any objections against expropriation measures (Article 3 para. 1). Herein lies a clear reference to the legal reservation previously asserted and only a dispensation with its future reuse, in any case no recognition of the lawfulness of the measures carried out ......

As a result of the Allies' laws and proclamations on the termination on the state of war with Germany, new statutory interference with German private assets was excluded and the normal peacetime principle of respect for and recognition of private assets is once again ensured."

The above statements demonstrate that there was no other path open to the Federal Republic of Germany in view of the situation following the Second World War than to conclude the Agreement made. The Federal Republic thus accepted a relatively small degree of interference with the rights of the persons concerned in order to attain at least partial sovereignty and to return to normality also in view of the respect for and recognition of private property. As stated, the regulation concerned was one which had no influence on the great majority of those concerned.

No new interference having constitutive effect is connected with the Agreement of 27 and 28 September 1990. The Settlement Convention was neither abrogated by the Two plus Four Treaty nor was its existence affected by the execution of the state unification of Germany. Article 10 of the Convention on Relations between the Three Powers and the Federal Republic of Germany of 1952/1954 (BGBl. 1955 II p. 305) already provided that in the event of the reunification of Germany, the provisions of the Settlement Convention should be reviewed at the request of one of the Contracting Parties. This review led to the Agreement of 27 and 28 September 1990, as a result of which extensive parts of the Settlement

Convention were rescinded, but not all of them. The provision made in Article 3 paras. 1 and 3 of Chapter Six of the Settlement Convention which was maintained is, in substantive terms, a provision which means that the sovereign freedom of decision granted to Germany applies ex nunc and cannot mean that the orders and measures of the Allies from the time during which Germany was under occupying rule may be retrospectively questioned. As the Applicant himself has correctly determined, the three Western Allies, especially the United States, did not want to expose themselves and their allies to any such risks. The Federal Republic of Germany had to accept this limitation in order to regain its full sovereignty.

The rights of those concerned were affected by this just as little as by the conclusion of the Settlement Convention. It must be borne in mind here, that at the time of this Agreement being made, those concerned had had no power of disposal with respect to their property for over 40 years and that they could not even have had a "legitimate expectation" of being able to realise their ownership rights. To this extent, reference must be made to the case law of the Commission, according to which the hope of recognition of the survival of a former property right which has not been susceptible of effective exercise for a long period is not to be considered as a "possession" within the meaning of Article 1 of Protocol No. 1. With respect to the facts of the present case, the principles of the Commission's Decisions of 10 July 1975, No. 6742/74, DR 3, p. 98; of 4 October 1977, Nos. 7655/76, 7656/76, 7657/76, DR 12, p. 111 and of 4 March 1996 in the Case of Weidlich et al., Nos. 19048/91, 19049/91, 19342/92, 19549/92, 18890/91, EuGRZ 1996, p. 386 are to be applied.

**Application in the specific case**

In this respect it is to be borne in mind that, according to the case law of the Court, it is not the Court's task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. This also applies where domestic law refers to rules of general international law or international agreements. The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (Judgments of 28 October 1998 in the Case of Pérez de Rada Cavanilles, Reports 1998 – VIII, p. 3242, § 43; of 18 February

1999 in the Case of Waite and Kennedy, No. 26083/94, § 54; of 18 February 1999 in the Case of Beer and Regan, No. 28934/95, § 44).

Here, the domestic courts gave extensive and comprehensible reasons for their decisions. In coming to their decision, they took the decisions of the highest court – the Federal Court of Justice – as well as opinions expressed in literature as their orientation. The essential statement of the courts that the question of whether the property seized under this legislation is German or foreign property in an individual case is to be decided solely by the country which executed seizure of the assets has already been ruled by the Federal Court of Justice in several decisions on – in the opinion of the domestic courts – comparable cases (such as BGHZ 8, 378; 32, 170; 62,340).

Due to the above-mentioned principles of the Court for an examination of the domestic case law, it cannot be decisive whether the interpretation of Article 3 of Chapter Six of the Settlement Convention chosen by the Federal Court of Justice and the lower courts and the application in an individual case is viewed as being correct or incorrect.

As evidenced by the decision of Bratislava Administrative Court, the expropriation was based on the Applicant being "a person of German nationality within the meaning of the provision in Section 1a of the decree ("persons of German and Hungarian nationality irrespective of citizenship status"), on the basis of the finding that this was, and is, generally known.". In the decision it is further stated that the Applicant's father had, as the complainant at the time, failed to submit arguments counter to this finding.

With respect to these reasons, it is at least not arbitrary and it is defensible if the German courts proceeded on the assumption that the property was seized as German property. Article 3 of Chapter Six of the Settlement Convention is interpreted too narrowly by the Applicant if he equates German external assets with the assets of German citizens.

It is to be taken into consideration in this respect that section 1 subsection 1 a of Decree No. 12 of 12 June 1945 with respect to agricultural property refers to "persons of German and Hungarian nationality irrespective of citizenship status". The criterion for confiscation was thus not the German citizenship of the person in question but rather the German "nationality". This legal notion of "nationality" or "ethnicity" was, however, not invented in 1945; the legal differentiation of citizens according to national differences (ethnicity or nationality) was common in the constitutional and administrative law of the Habsburg monarchy.

The former Czechoslovakia adopted this concept of differentiation, for example with respect to census. In section 2 of the 86th government ordinance of 26 June 1930 on the census of 1930, the following are listed under the personal characteristics to be declared (section 1): on the one hand, "citizenship", on the other hand "nationality", for which a person's mother tongue was generally decisive according to section 21 (collection of laws and ordinances of the Czechoslovak State, published on 30 June 1930).

This criterion of ethnicity is also found in the confiscation acts of other East European States. The Polish decree of 13 September 1946, for instance, is entitled "Decree on excluding persons of German nationality from the Polish national community", the assets owned by such persons going to the state. In Yugoslavia, citizens "of German ethnicity" were deprived of their citizenship on 21 November 1944 (Source: Raschhofer, Die deutsche Reparationsregelung und die Reparationsposition der Tschechoslowakei, in Festschrift von der Heydte (Um Recht und Freiheit), Berlin 1977, p. 495, 506).

Domestic legislation of the Federal Republic of Germany has also taken account of these facts. It was already in the Act on the general regulation of losses caused by the war and the collapse of the German Reich (General Act Regulating Compensation of Losses Caused by the War) of 5 November 1957 (BGBl. 1957 I, p. 1747) that provision had to made for losses suffered by persons of German "ethnicity". According to section 3 subsection 1 no. 2 of this Act, the losses which were subject to a special regulation also included those suffered by persons of German citizenship or ethnicity in connection with World War II as a result of their assets being finally deprived for the purpose of reparation pursuant to statutory acts or other orders for the liquidation of German external assets. Hence in this Act of 1957, "German external assets" are already understood as comprising not only the property of persons having German citizenship, but also the property of persons of German ethnicity. The Act to compensate losses due to reparation, restoration, destruction and restitution (Act concerning Losses due to Reparations) of 12 February 1969 (BGBl. 1969 I, p. 105) also contains both the notion of "German citizens" and the notion of "ethnic Germans" (section 13).

d) The above is merely intended to show that the line of argument advanced by the German courts is also tenable with knowledge of the Applicant's Liechtenstein citizenship and that the decision of Bratislava Administrative Court - contrary to what it would appear to be at first glance – was not based on merely ostensible reasons either. Hence nothing suggests that this decision would have to be treated as invalid. In view of this situation then, the specific subsumption under Article 3 of Chapter Six of the Settlement Convention cannot be decisive for the purposes of the Convention. The same is true for the Applicant's allegation that the expropriation did not take place for "reparation purposes". This issue, too, is for the domestic German courts to decide. At any rate, these courts have not interpreted the Settlement Convention contrary to its wording and its meaning and purpose. On the contrary, in their interpretation of Article 3 para. 1 of Chapter Six of the Settlement Convention ("purpose of reparation or restitution, or as a result of the state of war, or on the basis of agreements concluded, or to be concluded, by the Three Powers with other Allied countries, neutral countries or former allies of Germany") the courts have found that, going beyond the classical notion of reparation, this provision is intended to cover measures against "enemy property" more generally.

At any rate, irrespective of whether one agrees with the specific subsumption, there has been no violation of the Convention. Since – as set out above - the Settlement Convention as such does not violate the Convention, a violation of the Convention cannot be derived from the mere fact that the German courts confirmed that the requirements of Article 3 of Chapter Six of the Settlement had been fulfilled in the particular case.

**Violation of Article 6 para.1 of the Convention in respect of a fair hearing**

The Applicant claims that the Federal Constitutional Court violated the fair hearing principle because it had based its decision on the legal opinion of the Federal Republic of Germany and the three Western Powers without having referred to this aspect before.

The right to a fair hearing comprises the right of the parties to the proceedings to express their views on the facts both in factual and legal terms. The court, however, is not obliged to submit to the parties for comments on all legal questions which it considers relevant to its decision (Decision of the Commission of 7 February 1968, No. 3147/67 CD 27, 126).

Here the allegation of a violation of the fair hearing principle is unjustified on the ground of the facts alone. Cologne Higher Regional Court had already dealt in detail with the history and the interpretation of the Two plus Four Treaty, the Agreement of 27and 28 September 1990 and the question of the consent requirement referred to in Article 59 of the Basic Law (page 9 et seqq. of the judgment). The Higher Regional Court argued that the abrogation of the Settlement Convention had not been effected already by the Two plus Four Treaty and that para. 2 of the Agreement of 27and 28 September 1990 could have been dispensed with if Article 7 of the Two plus Four Treaty had also been intended to effect termination of the treaties concluded between the Federal Republic of Germany and the three Western Powers. It further argued that participation of the legislature had not been necessary since the preservation of Chapter Six Article 3 of the Settlement Convention did not have a constitutive effect. The Federal Constitutional Court only confirmed this legal opinion – which therefore could not have been surprising for the Applicant – and deepened the legal arguments thereon.

In the last paragraph of its decision of 28 January 1998 the Federal Constitutional Court has obviously not made use of any comments that had been withheld from the parties but, by way of a control reflection, ascertained the presumed legal opinion of the acting subjects of international law by interpreting their declarations and discovered therein a confirmation of its own legal view as expressed in the decision earlier on. The arguments of the Federal Constitutional Court are therefore ultimately only an interpretation of the treaties, supplementing the arguments of Cologne Higher Regional Court with certain nuances.

There is therefore no indication of a violation of the fair hearing principle in terms of a denial of the right to a hearing in accordance with the law or a surprise decision.

**Violation of Article 1 of Protocol No. 1 to the Convention:**

The Applicant complains that the Federal Republic of Germany, because of the return of the painting by the City of Cologne and the affirming court decisions, violated the applicant's property right. His property had not been lost due to confiscation measures by former Czechoslovakia as these measures should not have been recognised in Germany. Under the Convention, member states of Protocol No. 1 were not allowed to consider as legally valid any interference with property by foreign states contrary to international law.

1) In a number of comparable proceedings the Commission declared applications inadmissible. These were human rights applications against expropriations in the Soviet occupation zone of Germany between 1945 and 1949, against the statutes relating to the treaties concluded with Eastern European states (Moscow and Warsaw) and against the treaties with former Czechoslovakia (Decisions of 4 March 1996 in the Case of Weidlich et al., Nos. 19048/91, 19049/91, 19342/92, 19549/92, 18890/91, EuGRZ 1996, 386; of 4 October 1977 Nos. 7655/76, 7656/76, 7657/76, D.R. 12, 111; of 10 July 1975 No. 6742/74 D.R. 3, 98 and of 12 April 1996 No. 27718/95, unpublished).

In its decisions relating to the Moscow and Warsaw treaties as well as the Prague treaty the Commission held that as a result of confiscation by the Polish and Czech authorities it had not been possible for 30 years to effectively exercise the property right claimed by the applicants. Both prior to and after ratification of the treaties the existence of the property right had been almost as uncertain and its exercise as impossible. An adequate causality between the challenged act (ratification of the treaties by the Federal Republic of Germany) and the loss of the right claimed had not been shown.

In its decision primarily relevant with respect to the expropriations between 1945 and 1949 the Commission established the following rules:

- The original deprivation of the property occurred at the instance of the Soviet occupying forces in Germany, more than forty years ago, at a time when the Federal Republic of Germany did not even exist. Even if it was true that the authorities of both German States subsequently recognized the validity of the expropriations in question, the German authorities could in no way be held responsible for the deprivation of property as such, which was not imputable to them. In this respect the Commission lacked competence, ratione personae, to examine the circumstances in which the expropriations were carried out.
- The expropriations took place before the entry into force of the Convention (3 September 1953) and before the ratification of Protocol No. 1 by the Federal Republic of Germany (13 February 1957). According to the Commission's constant case-law a deprivation of ownership or other rights in rem is in principle an instantaneous act and does not produce a continuing situation of "deprivation of right" (Decisions of 4 July 1978, No. 7742/76, D.R. 14 p.146, and of 4 March 1996, No. 19048/91, 19049/91, 19342/92, 19549/92, 18890/91, EuGRZ 1996, p. 386).

- In any event the applicants could not claim to be victims of a violation of their rights under Article 1 of Protocol No. 1 unless the measure complained of (Unification Treaty) affected their "property" within the meaning of this provision. A person complaining of an interference with his property must show that such right existed (Decision of 14 October 1977, No. 7694/76 D.R., p. 131). According to the constant case-law "possessions" may be either "existing possessions" or valuable assets, including claims, in respect of which the applicant can argue that he has at least a "legitimate expectation" that they will realise. By contrast, the hope of recognition of the survival of a former property right which has not been susceptible of effective exercise for a long period is not to be considered as "possessions" within the meaning of Article 1 of Protocol No. 1 (Decision of 4 October 1977, No. 7655/76, 7656/76, 7657/76 D.R. 12, p. 111).

  The case under review did not concern any "existing possessions". The properties were expropriated a long time ago and the applicants had been unable for decades to exercise any owners' rights in respect of the properties concerned. In the German legal order these expropriations were being considered as legally valid even before the conclusion of the Unification Treaty. The provisions of the Treaty could not therefore be seen as legalising the deprivation of the property and thereby as being the source of the deprivation for the purposes of German law.

According to the above rules there has been no violation of Article 1 of Protocol No. 1 in the present case.

The expropriation measure and, in particular, the factual deprivation of the property which made it impossible for the Applicant's father and for the Applicant to dispose of their property was carried out by former Czechoslovakia in 1946 under the Decree No. 12 of 21 June 1945. With regard to these and other comparable confiscations, former Czechoslovakia and its successor states have never agreed to discuss the possibility of restitution. The Czech state which came into existence on 1 January 1993 holds to the expropriation decrees of 1945 and considers them to be valid. In a decision of 8 March 1995 – Pl US 14/94 – published in a German translation in the Bavarian Administrative Journal (Bayrisches Verwaltungsblatt) of 1996, p. 14 seq., – the Constitutional Court of the Czech Republic expressly confirmed the lawfulness of the Confiscation Decree of 25 October 1945 concerning the confiscation of enemy property and the national reform fund. This Decree No. 108 of 25 October 1945 provided for the large-scale confiscation of enemy property without compensation from persons including "persons of German and Hungarian nationality with the exception of persons who proved that they remained loyal to the Czech Republic, never offended against the Czech and the Slovakian population and either took an active part in the struggle for the liberation of the latter or suffered under the Nazi or fascist terror". In fact, this meant the confiscation of the property of persons of German nationality which had not yet been deprived under the preceding confiscation decrees. This decision contains fundamental statements with respect to the confiscations which show that there is nothing to be expected even from the Czech courts which would suggest that the expropriation decrees of 1945 will be repealed.

It follows from the above that in 1991 when the painting in question came to Cologne as a loan, the Applicant could no longer have any "legitimate expectation" that his property right could be realised. Since, according to the Commission's constant case law, the deprivation of ownership or other rights in rem is an instantaneous act and does not produce a continuing situation, the deprivation of ownership was already completed in 1946 when the Applicant's father was deprived of any power of disposition with respect to his property. Therefore, after 1991, it was not possible for the German authorities and courts to violate the Applicant's ownership or even deprive him of his property.

International law provides indeed that every unlawful act carries an obligation to grant redress. Unlawfulness does not, however, entail lack of effect. Under German international expropriation law expropriations carried out by a foreign state including "confiscations" without compensation are on principle considered effective if the State concerned has remained within the limits of its powers. Expropriation thus assumes validity within the sovereign territory of the foreign state and covers property which at the time of the expropriation was subject to the territorial sovereignty of the expropriating state – the principle of territoriality - . In this respect, acceptance of foreign expropriations is restricted only by a reservation in favour of ordre public, which, however, only applies if and to the extent that there is sufficient relationship to Germany and to the present time. On its own, the lack of compensation for the expropriation or what is otherwise considered a shortcoming according to the domestic view of fairness thus does not suffice insofar as the expropriation concerns objects in the territory of the expropriating state in order to deny its validity. The application of the principle of territoriality is based on the interest in international order and recognized worldwide. According to the judgment of 23 April 1991 by the First Panel of the Federal Constitutional Court (BVerfGE 84, 90 seq.) on which the Commission's decision of 4 March 1996 (EuGRZ 1996, 386) was based and which contains case-law references with respect to the above arguments, there are no constitutional objections with respect to this situation under ordinary law.

Finally it should be noted that the Applicant cannot claim that, as a result of the temporary removal to Germany as a loan, there is sufficient relationship to Germany and to the present time in order to justify the reservation of ordre public with respect to the validity of the expropriation measure. As already mentioned above, according to the Commission's constant case law, the deprivation of ownership is on principle an instantaneous act which does not produce the continuing situation of "deprivation of rights". Hence the relationship to the present time cannot be established through the temporary removal of the deprived property to the Federal Republic of Germany 40 years after the expropriation took place.

## IV. Violation of Article 14 of the Convention in conjunction with Article 1 para. 1 of Protocol No. 1 to the Convention

The Applicant submits that there is a violation of the prohibition of discrimination because the Federal Republic of Germany refused to compensate him for his assets which were considered German property. Although German courts had classified his assets as German property, in this case they awarded compensation only to German citizens, but not to citizens of neutral states.

1) In this context it must be pointed out first of all that Article 14 of the Convention is only a complement to the other substantive provisions of the Convention and its Protocols. Although the application of Article 14 does not presuppose a violation of one or more of those provisions – and to this extent it is autonomous -, there can be no room for its application unless the facts at issue fall within the ambit of one or more of those provisions (Commission's Decision of 4 March 1996, loc.cit.). Since, according to the observations made in Part III, Article 1 of Protocol No. 1 is not applicable to the facts of which the Applicant complains, this very reason would suffice to find no violation of Article 14 of the Convention. In this respect, it has to be pointed out again that the Federal Republic of Germany was not responsible for the expropriations in question and that therefore no compensation can be claimed from the Federal Republic of Germany.

2) A violation of the prohibition of discrimination cannot be derived from Article 5 of Chapter Six of the Settlement Convention either.

a) In our opinion, the individual owner cannot derive any direct claims from this obligation of the Federal Republic of Germany under international law. Individual claims cannot be based on Article 5 of Chapter Six of the Settlement Convention:

The commitment under international law with respect to the other contracting parties, entered into by the Federal Republic of Germany in Article 5 of Chapter Six of the Settlement Convention, is merely intended to "ensure that the former owners of property seized pursuant to reparation measures shall be compensated". This very wording shows that the Federal Republic of Germany is not bound by international law with respect to either the form or the type and extent of the provisions to be made.

According to the view of the European Commission for Human Rights as reflected in a decision of 8 January 1960 (Yearbook of the European Convention on Human Rights, Vol. 3, 1960, p. 206 et seqq.), Article 5 of Chapter Six of the Settlement Convention does not establish any property right within the meaning of the Convention for the Protection of Human Rights and Fundamental Freedoms, which might be violated. Article 5, therefore, is not an agreement for the benefit of a third party and does not grant them the right to claim compensation for the confiscation of their property (directly) from the Federal Government.

b) The domestic implementation of Article 5 of Chapter Six of the Settlement Convention was finally effected by means of the Act to compensate losses due to reparation, restoration, destruction and restitution (Act concerning Losses due to Reparations – RepG) of 12 February 1969 (BGBl. 1969 I p. 105). This Act provides, inter alia, for the compensation of losses to German external assets which occurred as a result of them being deprived for reparation purposes (Section 2 RepG). The Act concerning Losses due to Reparations is one of the components of the comprehensive legal regulation of the Federal Republic of Germany with respect to the equalization of burdens. Persons entitled to assert a claim were natural persons with German citizenship and, under certain conditions, also ethnic Germans (Sections 13, 38 RepG).

The commitment with respect to compensation contained in Article 5 is connected with the exclusion of action under Article 3 paras. 1 and 3. The implementation of Article 5 in form of the Act concerning Losses due to Reparations provided for a possibility to compensate persons eligible for whom, pursuant to Article 3 paras. 1 and 3 of Chapter Six of the Settlement Convention, there were no domestic means of asserting their claims against the depriving states.

It was not necessary, however, to include foreign citizens who had been victims of measures directed against German external assets. Pursuant to the Settlement

Convention the Federal Republic of Germany had creative latitude regarding the group of persons eligible. Restricting the group of persons eligible to citizens of a particular State and to persons of that State's ethnicity is justified by the State's duty to provide for the welfare of this group of persons, which is based on the idea of the social state, and by the fact that the financial means generated by the community for the purpose of compensation should first of all be of benefit to the citizens concerned of that particular State. Other citizens can avail themselves of the legal and diplomatic means of their native country irrespective of whether they are denied recourse to German law by reference to Article 3 para. 3 of Chapter Six of the Settlement Convention.

**3)** But even regardless of these basic considerations it cannot be said that there has been discrimination against the Applicant.

Section 15 of the Act concerning Losses due to Reparations in section 15 expressly excludes losses of art objects and collections as not eligible for compensation.

Section 15 provides:

"Section 15

(1) Not eligible for compensation are

...

3. losses of

...

d. art objects and collections,

to the extent that such assets are not part of the operating assets within the meaning of the Valuation Law or are not, as products of the exercise of an occupation or of scientific research, treated as equivalent to objects of the exercise of an occupation or of scientific research as provided for in the ordinance enacted under section 15 subsection 2 of the *Feststellungsgesetz* (Act on the assessment of damage incidental to expulsion and material damage caused by war); ..."

Under the Valuation Law, operating assets include all parts of an economic unit that serves as the main purpose of a trade or business. A trade or business, apart from the operation of corporations, partnerships etc., does not, however, include agriculture and forestry if these form the main purpose of the enterprise. This provision would therefore preclude any claim for compensation made by German nationals as well, so that for this reason alone the Applicant cannot have been discriminated against as compared to German nationals.

**4)** **In addition, pursuant to section 53 of the Act concerning Losses due to Reparations, applications for compensation under that Act could only be filed before 31 December 1974. Neither the Applicant nor his father filed any such application within the time limit prescribed, although the fact of an expropriation as a person of German nationality pursuant to section 1 subsection 1 a of Decree No. 12 of 21 June 1945 had been known to them since the expropriation measure in 1946 and definitely since the judgment of Bratislava Administrative Court in 1951.** Circumstances which could have justified the Applicant's exemption from this time limit are not apparent.

In this respect the Applicant cannot invoke section 13 of the Act concerning Losses due to Reparations which provides for the compensation of losses suffered by persons who at the time when the loss occurred were German citizens or who, as ethnic Germans, possessed no citizenship or only that of a state in whose territory measures of deprivation or expulsion were taken against these persons because of their German ethnicity. Section 13 of the Act concerning Losses due to Reparations refers, with regard to personal characteristics, to groups of persons who were usually affected by confiscation. Since the Applicant and his father knew that they were expropriated as persons of German nationality they could have asserted, within the time limit prescribed, that they had a right to compensation just like other ethnic Germans. In that case the courts could and should have examined whether section 13 applied mutatis mutandis to the Applicant's claim.

As the Applicant did not file such an application he has not exhausted the domestic remedies with regard to his claim for compensation. He therefore cannot assert discriminatory unequal treatment on this ground either.

## D. Motion

I apply for a finding that the Federal Republic of Germany has not violated the Convention.

(Stohr)
Permanent Deputy Agent

## Annex 37

# GERMAN-CZECH DECLARATION ON MUTUAL RELATIONS AND THEIR FUTURE DEVELOPMENT
OF 21 JANUARY 1997

## Translation of the German Original

## German-Czech Declaration on Mutual Relations and their Future Development of 21 January 1997

The Governments of the Federal Republic of Germany and the Czech Republic,

Recalling the Treaty of 27 February 1992 on Good-neighbourliness and Friendly Cooperation between the Federal Republic of Germany and the Czech and Slovak Federal Republic with which Germans and Czechs reached out to each other,

Mindful of the long history of fruitful and peaceful, good-neighbourly relations between Germans and Czechs during which a rich and continuing cultural heritage was created,

Convinced that injustice inflicted in the past cannot be undone but at best alleviated, and that in doing so no new injustice must arise,

Aware that the Federal Republic of Germany strongly supports the Czech Republic's accession to the European Union and the North Atlantic Alliance because it is convinced that this is in their common interest,

Affirming that trust and openness in their mutual relations is the prerequisite for lasting and future-oriented reconciliation,

jointly declare the following:

### I.

Both sides are aware of their obligation and responsibility to further develop German-Czech relations in a spirit of good-neighbourliness and partnership, thus helping to shape the integrating Europe.

The Federal Republic of Germany and Czech Republic today share common democratic values, respect human rights, fundamental freedoms and the norms of international law, and are committed to the principles of the rule of law and to a policy of peace. On this basis they are determined to cooperate closely and in a spirit of friendship in all fields of importance for their mutual relations.

At the same time both sides are aware that their common path to the future requires a clear statement regarding their past which must not fail to recognize cause and effect in the sequence of events.

### II.

The German side acknowledges Germany's responsibility for its role in a historical development which led to the 1938 Munich Agreement, the flight and expulsion of people from the Czech border area and the forcible breakup and occupation of the Czechoslovak Republic.

It regrets the suffering and injustice inflicted upon the Czech people through National Socialist crimes committed by Germans. The German side pays tribute to the victims of National Socialist tyranny and to those who resisted it.

The German side is also conscious of the fact that the National Socialist policy of violence towards the Czech people helped to prepare the ground for flight, expulsion and forced resettlement.

## III.

The Czech side regrets that, by the expulsion and forced resettlement of Sudeten Germans from the former Czechoslovakia after the war as well as by the expropriation and deprivation of citizenship, much suffering and injustice was inflicted upon innocent people, also in view of the fact that guilt was attributed collectively. It particularly regrets the excesses which were contrary to elementary humanitarian principles as well as legal norms existing at that time, and it furthermore regrets that Law No. 115 of 8 May 1946 made it possible to regard these excesses as not being illegal and that in consequence these acts were not punished.

## IV.

Both sides agree that the wrongs committed shall be a matter of the past, and will therefore orient their relations towards the future. Precisely because they remain conscious of the tragic chapters of their history, they are determined to continue to give priority to understanding and mutual agreement in the development of their relations, while each side remains committed to its legal order and respects that the other side has a different legal position. Both sides therefore declare that they will not burden their relations with political and legal issues which stem from the past.

## V.

Both sides reaffirm their obligations arising from Articles 20 and 21 of the Treaty of 27 February 1992 on Good-neighbouriiness and Friendly Cooperation, in which the rights of the members of the German minority in the Czech Republic and of persons of Czech descent in the Federal Republic of Germany are set out in detail.

Both sides are aware that this minority and these persons play an important role in mutual relations and state that their promotion continues to be in their common interest.

Both sides are convinced that the Czech Republic's accession to the European Union and freedom of movement in this area will further facilitate the good-neighbourly relations of Germans and Czechs.

In this connection they express their satisfaction that, due to the Europe Agreement on Association between the Czech Republic and the European Communities and their Member States, substantial progress has been achieved in the field of economic cooperation, including the possibilities of self-employment and business undertakings in accordance with Article 45 of that Agreement.

Both sides are prepared, within the scope of their applicable laws and regulations, to pay special consideration to humanitarian and other concerns, especially family relationships and ties as well as other bonds, in examining applications for residence and access to the labour market.

### VII.

Both sides will set up a German-Czech Future Fund. The German side declares its willingness to make available the sum of DM 140 million for this Fund. The Czech side, for its part, declares its willingness to make available the sum of Kc 440 million for this Fund. Both sides will conclude a separate arrangement on the joint administration of this Fund.

This Joint Fund will be used to finance projects of mutual interest (such as youth encounter, care for the elderly, the building and operation of sanatoria, the preservation and restoration of monuments and cemeteries, the promotion of minorities, partnership projects, German-Czech -5- discussion fora, joint scientific and environmental projects, language teaching, cross-border cooperation).

The German side acknowledges its obligation and responsibility towards all those who fell victim to National Socialist violence. Therefore the projects in question are to especially benefit victims of National Socialist violence.

### VIII.

Both sides agree that the historical development of relations between Germans and Czechs, particularly during the first half of the 20th century, requires joint research, and therefore endorse the continuation of the successful work of the German-Czech Commission of Historians.

At the same time both sides consider the preservation and fostering of the cultural heritage linking Germans and Czechs to be an important step towards building a bridge to the future.

Both sides agree to set up a German-Czech Discussion Forum, which is to be promoted in particular from the German-Czech Future Fund, and in which, under the auspices of both Governments and with the participation of all those interested in close and cordial German-Czech partnership, German-Czech dialogue is to be fostered.

Prague, 21 January 1997

| | |
|---|---|
| For the Government of the<br>Federal Republic of Germany | For the Government of the<br>Czech Republic |
| Dr. Helmut Kohl | Prof. Václav Klaus |
| Dr. Klaus Kinkel | Josef Zieleniec |

Source:

Bulletin of the Press and Information Office of the Federal Government of 24 January 1997, No. 7, p. 61-62

Political Archive of the Foreign Office, Archive of Treaties

## Annex 38

# OFFICIAL NOTE OF THE GOVERNMENT OF THE PRINCIPALITY OF LIECHTENSTEIN OF 5 MAY 1997

Translation of the German Original

(Coat of Arms)

*REGIERUNG DES FÜRSTENTUMS LIECHTENSTEIN*
(Government of the Principality of Liechtenstein)

The Government of the Principality of Liechtenstein presents its compliments to the Government of the Federal Republic of Germany and has the honour to submit the following matter to its attention:

With reference to the "*Deutsch-Tschechische Erklärung über die Gegenseitigen Beziehungen und deren künftige Entwicklung*" (German Czech Declaration on Mutual Relations and their Future Development) signed by the Government of the Federal Republic of Germany and the Government of the Czech Republic in Prague on January 21, 1997, and subparagraph IV thereof, pursuant to which "*beide Seiten darüber übereinstimmen, daß das begangene Unrecht der Vergangenheit angehört*" (both sides agree that the wrongs committed shall be a matter of the past) and that "*jede Seite ihrer Rechtsordnung verpflichtet bleibt und respektiert, daß die andere Seite eine andere Rechtsauffassung hat*" (each side remains committed to its legal order and respects that the other side has a different legal position), it is the desire of the Government of the Principality of Liechtenstein to emphasise that this German Czech Declaration will not affect the rights of the Principality of Liechtenstein and the rights of her citizens with regard to Liechtenstein assets which were expropriated by the Czechoslovakian Government contrary to international law, in spite of the fact that such expropriations were effected under the heading of "*volksdeutsches Vermögen*" (ethnic German assets) or "*deutsches Auslandsvermögen*" (German external assets).

In this context, the Government of the Principality of Liechtenstein points out once more that the Czech Republic is acting contrary to international law when describing as legitimate on the basis of their "*deutscher Charakter*" (German nature) the expropriations effected with respect to Liechtenstein citizens after 1945. The Government starts on the assumption that, in the context of her relations to the Czech Republic in the wake of the German-Czech Declaration, the Federal Republic of Germany will refrain from doing anything that might encroach upon the rights of Liechtenstein vis-à-vis the Czech Republic.

(Seal:) (in the centre: Coat of Arms)
(*FÜRSTENTUM LIECHTENSTEIN,*
*REGIERUNG*)
(Principality of Liechtenstein, Government)
(signature, illegible)

To the Government of the
Federal Republic of Germany
Bonn

FL-9490 Vaduz

***REGIERUNG DES FÜRSTENTUMS LIECHTENSTEIN***
(Government of the Principality of Liechtenstein)
page 2

In its note of 5 May 1997, the Government of the Principality of Liechtenstein has in particular confirmed vis-à-vis the Government of the Czech Republic that it reserves all rights to assert such claims both for the Principality of Liechtenstein and her nationals which have arisen or will arise for them on the basis of the confiscation of Liechtenstein assets. The Government of the Principality of Liechtenstein furthermore emphasised vis-à-vis the Government of the Czech Republic that, with respect to the unlawful appropriation of Liechtenstein assets, the Czech Republic will not be freed from its responsibility vis-à-vis the Principality of Liechtenstein by declarations made with third countries.

The Government of the Principality of Liechtenstein avails itself of this opportunity to renew to the Government of the Federal Republic of Germany the assurance of its high esteem and consideration.

Vaduz, 5 May 1997

## Annex 39

# VERBAL NOTE OF THE EMBASSY OF THE FEDERAL REPUBLIC OF GERMANY OF 10 JUNE 1997

## Translation of the German Original

(Federal Eagle) *Botschaft*
*der Bundesrepublik Deutschland*
*Bern*
(Embassy of the Federal Republic of Germany, Bern)

Gz (Reference No): RK 505.00 LST
(Please quote in your reply)

### Verbal Note

The Embassy of the Federal Republic of Germany has the honour of confirming receipt of the Verbal Note of the Embassy of the Principality of Liechtenstein dated May 5.

The German-Czech Declaration with Respect to the Mutual Relations and their Future Development dated 21 January 1997 is a bilateral political declaration which does not affect the rights of third States and their nationals.

As far as the question of German claims with respect to property rights is concerned, this Declaration is not connected with any waiver of legal positions. On the contrary, the difference in the legal opinions of both states is expressly set out, as expressed in item IV of the Declaration, which reads:"*...wobei jede Seite ihrer Rechtsordnung verpflichtet bleibt und respektiert, daß die andere Seite eine andere Rechtsauffassung hat*" (...while each side remains committed to its legal order and respects that the other side has a different legal position).

The Embassy of the Federal Republic of Germany uses this note as an opportunity to renew its formal expression of high esteem for the Embassy of the Principality of Liechtenstein.

Bern, 10 June 1997
HF/Ed

L.S.

To the
Embassy of the
Principality of Liechtenstein
3000 Bern

## Annex 40

# LETTER OF THE CHANCELLOR OF THE FEDERAL REPUBLIC OF GERMANY, DR. HELMUT KOHL, OF 14 JANUARY 1997

Translation of the German Original

*BUNDESREPUBLIK DEUTSCHLAND*
*DER BUNDESKANZLER*
(Federal Republic of Germany
The Chancellor)

Bonn, January 14, 1997

His Serene Reigning Highness
Prince Hans-Adam II of Liechtenstein
Vaduz Castle

Vaduz

COPY

(stamp:) **received January 20, 1997**

Your Highness,

I would like to thank you very much indeed for your letter of November 14, 1996. It is a pleasure for me, too, to recall our interesting conversation here in Bonn.

It was with interest that I took note of your explanations concerning the litigation pending between you and the Municipality of Cologne. I am sure you will understand that I do not want to make a statement on this matter, because this is a lawsuit that is still pending and the Federal Government cannot exert any influence thereon.

As far as the German-Czech Joint Declaration is concerned, it will not have any influence on this lawsuit, because it leaves open legal questions in connection with expropriations in the then Czechoslovakia.

I am pleased to avail myself of this opportunity to renew my best wishes for a Happy New Year for you.

With best regards,

Yours sincerely

(signed signature, illegible)

## Annex 41

## AIDE MEMOIRE OF THE PRINCIPALITY OF LIECHTENSTEIN TO THE FOREIGN OFFICE OF THE FEDERAL REPUBLIC OF GERMANY OF 3 JUNE 1998

## Translation of the German Original

## Aide Memoire

Legal experts consulted by the Government of the Principality of Liechtenstein concur in the opinion that the decision of the Federal Constitutional Court of the Federal Republic of Germany of 28 January 1998 in the proceedings concerning the constitutional complaint filed by HSRH Prince Hans-Adam II of Liechtenstein (2 BvR 1981/97) gives rise to considerable doubt as to whether such decision is compatible with international law. In the last analysis, the "purpose-oriented interpretation" of Article 3 paragraph 1 and 3 of Chapter Six of the so-called Settlement Convention of 1954 amounts to an inclusion of the Principality of Liechtenstein and Liechtenstein citizens into the Federal Republic of Germany's settlement of reparations and damages caused by the war, even though there is no reason whatsoever to establish such a link. This constitutes a violation of the legal status guaranteed by virtue of international law both with respect to the Liechtenstein Head of State and the State of Liechtenstein itself.

The Government of the Principality of Liechtenstein therefore asks you to understand that, regardless of its recognition of the independence of courts, they cannot accept the legal injury caused thereby.

In the interest of a cooperative and friendly discussion of the situation created by the above-described decision of the Federal Constitutional Court and the questions arising as a result thereof, talks on a diplomatic level should be held as soon as possible with the participation of experts.

Vaduz, 3 June 1998

## Annex 42

# LIST OF QUESTIONS SUBMITTED BY THE PRINCIPALITY OF LIECHTENSTEIN TO THE FEDERAL GOVERNMENT OF GERMANY OF JULY 1998

Translation of the German Original

## List of Questions
## with a view to the continuation of consultations commenced in Bonn in July 1998
## (submitted by the Liechtenstein delegation)

1. Does the new German Government share the legal opinion of its predecessor that on the basis of a purpose-oriented interpretation of Article 3 paragraph 1 and 3 of Chapter Six Settlement Convention (Convention on the Settlement of Matters Arising out of the War and the Occupation... *BGBl.* [*Bundesgesetzblatt* - Federal Law Gazette] 1955 II p 405) the term "measures carried out with regard to German external assets" is to be understood to include all measures directed against German property in accordance with the intention of the acting State, and that, consequently, in 1945, Czechoslovakia was entitled to confiscate for the purpose of reparations also the assets of citizens of the Principality of Liechtenstein which was neutral in World War II?

2. Is the Government of the Federal Republic of Germany aware of the fact that pursuant to Art. 5 Settlement Convention, the Federal Republic of Germany was in principal obligated to compensate the owners of assets which had been seized on the basis of the measures specified in Art. 3 Settlement Convention, and that the compensation claim of Liechtenstein citizens affected hereby - a claim which has existed on the merits, but was established in recognition of the facts by the decision of the *Bundesverfassungsgericht* [Federal Constitutional Court] no earlier than on January 28, 1998 - was not affected and could not be affected by the abrogation of Art. 5 Settlement Convention by means of the exchange of notes dated September 27/28, 1990 (*BGBl.* 1990 II p 1387)?

3. Does the Government of the Federal Republic of Germany share the view of the *LG/OLG Köln* [*Landgericht/Oberlandesgericht Köln* - Regional Court / Court of Appeal Cologne] (ref No: 5 O 182/92 / 22 U 215/95 - Judgment of July 9, 1996) - a view that has not been contradicted

neither by the ***Bundesgerichtshof*** [Federal Court of Justice] nor by the Federal Constitutional Court - that the German national legal order applicable to date had at no point of time granted adequate compensation - in terms of Art. 5 Settlement Convention - to Liechtenstein citizens affected in this context? How will the Federal Government even out such a treatment that is discriminating in comparison to other persons who suffered losses as a result of the war?

4. By means of a number of international treaties with States that were neutral during World War II, the Federal Republic of Germany made sure that their nationals will not have to suffer such losses as a result of the war which were and are caused by Germany's attack on her neighbouring States.

> Cf eg the treaties with Switzerland (*BGBl.* 1953 II p 15), with Sweden (*BGBl.* 1956 II p 811), with Spain (*BGBl.* 1959 II p 245) and with Portugal (*BGBl.* 1959 II p 264)

Is the Federal Government prepared also to agree on a just settlement with Liechtenstein, in the spirit of the above-mentioned treaties and in recognition of the fact that the exchange of notes of September 27/28, 1990, and the German-Czech "final declaration" of March 8, 1999, have now finally fixed such losses resulting from the war that have been suffered by the Principality?

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## Annex 43

# LETTER OF THE FOREIGN MINISTER OF LIECHTENSTEIN, DR. ANDREA WILLI, TO THE GERMAN FOREIGN MINISTER, JOSEF FISCHER, OF 9 DECEMBER 1999

Translation of the German Original

(State Coat of Arms)
**GOVERNMENT OF THE PRINCIPALITY OF LIECHTENSTEIN**

Vaduz, 9 December 1999

MINISTRY FOR FOREIGN AFFAIRS

HE
Joseph Fischer
Federal Minister for Foreign Affairs
Federal Foreign Office
Berlin

Dear Federal Minister,

By my letter of 29 September 1999 in connection with the decision of the Federal Constitutional Court of 28 January 1998 (Lime-Kiln Judgment) I asked you for an appointment for a fringe-meeting during the OSCE Summit Meeting of 18 / 19 November 1999 in Istanbul. The Ambassador of the Federal Republic of Germany in Bern and Vaduz, Mr Klaus Bald, informed me verbally on 10 November 1999 that an appointment in Istanbul would not be possible for you.

I clearly regret this and may express the renewed request of the Liechtenstein Government who urgently wishes to have an appointment for a talk given the present state of affairs, so I would like to talk to you on the next possible occasion and before end of January 2000 at the latest, if possible. If you see an opportunity to come to Vaduz in this connection, I would be pleased if you would accept this letter as the appropriate invitation. If this is not the case, I will also be ready to travel to Berlin.

Please find enclosed the promised aide memoire concerning the matter at issue.

I would be very grateful for your early reply concerning time and place of the talk and for your earliest response to the aide-memoire.

Please accept, Mr Foreign Minister, the assurances of my high consideration.

(signed signature: Andrea Willi)
Regierungsrätin Dr Andrea Willi
Minister for Foreign Affairs

Encl.: Aide memoire of 9 December 1999

## Annex 44

### AIDE MEMOIRE OF THE FOREIGN MINISTER OF LIECHTENSTEIN TO THE GERMAN FOREIGN MINISTER OF 9 DECEMBER 1999

ENCLOSURES:

1.

DECLARATION OF THE PRINCIPALITY OF LIECHTENSTEIN OF 25 MAY 1999 (DOCUMENT EF.DEL/17/99 OF 25 MAY 1999 ON THE OCCASION OF THE 7TH OSCE ECONOMIC FORUM "REVIEW OF THE IMPLEMENTATION OF COMMITMENTS ON THE ECONOMIC DIMENSION" IN PRAGUE (ENGLISH TRANSLATION)

2.

WRITTEN STATEMENT OF THE CZECH REPUBLIC OF 26 MAY 1999 WITH RESPECT TO THE DECLARATION OF THE PRINCIPALITY OF LIECHTENSTEIN OF 25 MAY 1999 (DOCUMENT EF.DEL/17/99 OF 25 MAY 1999 ON THE OCCASION OF THE 7TH OSCE ECONOMIC FORUM "REVIEW OF THE IMPLEMENTATION OF COMMITMENTS ON THE ECONOMIC DIMENSION" IN PRAGUE (ENGLISH ORIGINAL)

## Translation of the German Original

## Aide Memoire

Major rights of the Principality of Liechtenstein have been violated by the decision of the Federal Constitutional Court of the Federal Republic of Germany of 28 January 1998 in the lawsuit concerning the constitutional complaint of HSRH Prince Hans-Adam II of Liechtenstein (2 BvR 1981/97). HSRH Prince Hans-Adam II of Liechtenstein and the Government of the Principality of Liechtenstein (in his letter of 29 May 1998 to the then Foreign Minister of the Federal Republic of Germany, and in their verbal note of 3 June 1998, respectively) raised claims vis-à-vis the Federal Republic of Germany with regard to compensation for Liechtenstein citizens whose assets had been confiscated without compensation on the national territory of Czechoslovakia by virtue of the Beneš Decree No. 12 of 21 June 1945. As the Federal Constitutional Court finally determined in the above-mentioned decision of 28 January 1998, such a confiscation without compensation was effected for the purpose of settling reparation claims by Czechoslovakia (today's Czech Republic) vis-à-vis the German Reich, as a subject of law identical with its legal successor, the Federal Republic of Germany.

Raising its claims for compensation, the Government of the Principality of Liechtenstein was guided by the following considerations:

1. The sovereignty of the Principality of Liechtenstein has been violated by the judgment of the Federal Constitutional Court of 28 January 1998.

2. The protection of Liechtenstein citizens' property must not be questioned. If it is considered legal that Liechtenstein citizens should be liable for other German-speaking nationalities, then, apart from Liechtenstein's sovereignty, the protection of property of its citizens has been taken into question. This situation is aggravated, when, in hindsight, such confiscations are not recognized as an

> injury, when the damage is not compensated nor the danger of repetition excluded.

In the subsequent consultations of 10 July 1998 and 14 June 1999 in Bonn and Vaduz, respectively, the German side explained its point of view in more detail. However, no convergence of the two positions was achieved. In addition, the Czech Republic has expressly adopted the precedent of the German courts with respect to reparation confiscations of neutral Liechtenstein property (cf the written statement of the Czech Republic of 26 May 1999 in reply to the declaration of the Principality of Liechtenstein of 25 May 1999 on the occasion of the 7th OSCE Economic Forum "Review of the Implementation of Commitments on the Economic Dimension" in Prague). Consequently, it is all the more important to reach a final clarification of the legal issues involved.

The Government of the Principality of Liechtenstein is very much interested in using its best efforts to reach an agreement with the Government of the Federal Republic of Germany through diplomatic channels, in accordance with the traditionally friendly relationship between the Principality of Liechtenstein and the Federal Republic of Germany. The Liechtenstein Government aims at a comprehensive settlement, safeguarding and meeting Liechtenstein interests to their full extent (for example by an agreement on compensation). In the event that such a settlement is not possible, the Principality of Liechtenstein will invoke the jurisdiction of the International Court of Justice in due course.

Hence, the Government of the Principality of Liechtenstein, represented by Foreign Minister Dr. Andrea Willi, seeks to hold consultations with the German Foreign Minister Joseph Fischer with the objective of taking up negotiations between the Federal Republic of Germany and the Principality of Liechtenstein as soon as possible. In this context, reference is made to the letter of Foreign Minister Andrea Willi of 9 December 1999 addressed to the German Foreign Minister Joseph Fischer, asking him for an urgent meeting.

The "purpose-oriented" interpretation of Article 3 of Chapter Six of the Settlement Convention, confirmed by the Federal Constitutional Court on 28 January 1998, categorized property of Liechtenstein citizens as *German* enemy property for the very first time. In accordance with Article 5 Chapter Six of the Settlement Convention in the version applicable until Germany's reunification, this resulted in an - automatic - obligation for the Federal Republic of Germany to pay compensation. According to the statements of the German side during the Vaduz consultation, Article 5 of Chapter Six of the Settlement Convention was only deleted on the grounds that the contracting States were of the opinion - erroneously, as it now turns out - that all expropriations pursuant to Article 3 of Chapter Six of the Settlement Convention had already been compensated. As a corollary, the abolition of Article 5 of Chapter Six of the Settlement Convention has left a lacuna that is contrary to the legal principle requiring regulations and, in the Liechtenstein case, this lacuna should be remedied by interpreting the deleted provision in accordance with the original intentions. Independent of the continued application of the specific compensation rules of Allied law settling the consequences of the war, the Federal Republic of Germany as reparation debtor was under the obligation to ensure that in the case of Liechtenstein no neutral property is used for reparation purposes.

In a number of treaties with States which were neutral during World War II and affected by the consequences of the war, the Federal Republic of Germany has entered into compensation arrangements. The Government of the Principality of Liechtenstein, a country which had equally been neutral during World War II, therefore expresses to its expectation that the Government of the Federal Republic of Germany will also commence negotiations in the matter of the Liechtenstein citizens affected of late, with the objective to reach a just compensation.

Vaduz, 9 December 1999

Enclosures:

Declaration of the Principality of Liechtenstein of 25 May 1999 (document EF.DEL/17/99 of 25 May 1999 on the occasion of the 7th OSCE Economic Forum "Review of the Implementation of Commitments on the Economic Dimension" in Prague (German Text) [here: English translation]

Written statement of the Czech Republic of 26 May 1999 with respect to the Declaration of the Principality of Liechtenstein of 25 May 1999 (document EF.DEL/17/99 of 25 May 1999 on the occasion of the 7th OSCE Economic Forum "Review of the Implementation of Commitments on the Economic Dimension" in Prague (English Text)

Translation of the German Original

EF.DEL/17/99
25 May 1999

GERMAN only

-Declaration of the Liechtenstein Delegation
Prague, 25 May 1999

**7th OSCE Economic Forum "Review of the Implementation of Commitments on the Economic Dimension"**

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Mr President,

On the occasion of the 7th OSCE Economic Forum and with reference to the topic "Review of the Implementation of Commitments on the Economic Dimension" on the basis of the Bonn document which sets out the guidelines for economic cooperation between the participating States, the Liechtenstein Delegation would like to avail itself of this opportunity to draw your attention to the unchanged and difficult situation with respect to the bilateral relations between the Principality of Liechtenstein and former Czechoslovakia, today's Czech Republic.

May I briefly recall at this point the past history of the case:

The cause of the problems which continue to exist in the relations between the Principality of Liechtenstein and today's Czech Republic goes back to the decisions taken contrary to international law by the Government of former Czechoslovakia in the year 1945. As a result of these decisions, all Liechtenstein citizens in former Czechoslovakia were expropriated and considered as enemics of Czechoslovakia by virtue of their affiliation to the German-speaking community. This was done on the basis of ethnic criteria, denying the sovereignty of the Principality of Liechtenstein.

Like the Government of former Czechoslovakia at the time, the Government of the Czech Republic has so far refused restitution of the confiscated property or compensation in any form whatsoever for Liechtenstein citizens affected by these expropriations. This attitude is contrary to the two principles laid down in the preamble of the Bonn document of the year 1990. On the one side, these principles guarantee full recognition and full protection of all types of property, including private property, and the right of citizens to own and use property. On the other side, they recognize the right to prompt payment of a just and effective compensation when private property is transferred to public use.

The Liechtenstein Delegation regrets not being in a position to report on any progress in this matter.

Thank you, Mr President.

EF.DEL/57/99
26 May 1999

ENGLISH only

Distributed at the request of the Czech Republic

7. OSCE Economic Forum, "Review of the Implementation of Commitments on the Economic Dimension"

## Written Reply of the Czech Republic to the Statement of the Principality of Liechtenstein, May 25, 1999

We consider the intervention made by the representative of the Principality of Liechtenstein on May 25 during the discussion on the review of the implementation of commitments on the economic dimension an undue and useless attempt at burdening the economic dimension of the OSCE with bilateral issues.

The concrete property claims of the Liechtenstein family were dealt with in the past by Czech and German courts, the proceedings of which, however, resulted in verdicts rejecting the claims raised by the Liechtenstein party.

The Czech Republic, desirous of maintaining standard relations with the Principality of Liechtenstein, solicited recognition by Liechtenstein (as well as by all other countries) in late 1992 in connection with its succession into the obligations of the former Czechoslovakia, as well as the establishment of diplomatic relations between the two countries as of 1st January 1993. Although there exist contacts between the two States within international organizations and in the bilateral sphere, Liechtenstein has not to date *de jure* recognized the Czech Republic. We recall in this context that the recognition of a State and the establishment of diplomatic relations should not be conditioned by any private law claims whatsoever.

## Annex 45

# LETTER OF THE GERMAN FOREIGN MINISTER, JOSEF FISCHER, TO THE FOREIGN MINISTER OF LIECHTENSTEIN, DR. ANDREA WILLI, OF 20 JANUARY 2000

Translation of the German Original

THE FEDERAL MINISTER
OF FOREIGN AFFAIRS
Berlin, 20 January 2000

Her Excellency
The Foreign Minister of
The Principality of Liechtenstein
Regierungsrätin
Dr Andrea Willi

9490 Vaduz
Liechtenstein

Dear Colleague,

Thank you very much for your letter of 9 December 1999 and the enclosed aide memoire. It is known that the German Government does not share the legal opinion expressed therein. Even upon renewed examination of the legal and factual position, they do not see a possibility to make compensation payments to the Principality of Liechtenstein for losses of property suffered as a result of post-war expropriations in former Czechoslovakia.

The Federal Republic of Germany has never adopted the Czechoslovakian measures as its own. They cannot be attributed to Germany on a constructive legal basis. This is true both with a view to the German court rulings in the lawsuit regarding the return of a painting ("The large lime kiln") that has appeared in Cologne and is now the subject matter of individual application proceedings pending before the European Court of Human Rights in Strasbourg, and also with a view to the additional claims raised in the aide memoire without detailed specification.

In the event that you feel additional talks are required to discuss these claims, I would suggest that this should be done on the level of specialized senior officials in continuation of the consultations of 10 July 1998 and 14 June 1999.

**Yours sincerely,**

**(signed signature: J. Fischer)**

## Annex 46

# CZECHOSLOVAKIAN CONSTITUTIONAL DECREE OF THE PRESIDENT OF THE REPUBLIC OF 2 AUGUST 1945 ON THE REGULATION OF THE CZECHOSLOVAK NATIONALITY OF PERSONS BELONGING TO THE GERMAN AND HUNGARIAN PEOPLE

Translation of the Czech Original

33.

## Constitutional Decree of the President of the Republic of 2 August 1945 on the Regulation of the Czechoslovak Nationality of Persons belonging to the German and Hungarian People.

On the basis of a proposal of the Government and following the agreement with the Slovak National Council, I hereby lay down as follows:

§ 1

(1) Czechoslovak nationals belonging to the German or Hungarian people who acquired German or Hungarian nationality under the regulations of the foreign occupational power lost their Czechoslovak nationality as of the day of such acquisition.

(2) Other Czechoslovak nationals belonging to the German or Hungarian people shall lose their Czechoslovak nationality as of the day this Decree comes into effect.

(3) This Decree shall not apply to Germans or Hungarians who, at the time of increased threat to the Republic (§ 18 of Decree of the President of the Republic of 19 June 1945, No. 16 Coll., on Punishment of Nazi Criminals, Traitors and Their Supporters and on Extraordinary People's Courts), declared themselves as Czechs or Slovaks in an official announcement.

(4) Czechs, Slovaks and nationals of other Slavonic nations who at that time declared themselves Germans or Hungarians for being impelled by duress or circumstances deserving special consideration shall not be regarded as Germans or Hungarians under this Decree, should the Ministry of Interior approve a certificate of national loyalty, to be issued by the competent district national committee (district administrative commission), having examined presented facts.

(1) To those persons falling within the scope of provisions of § 1 who prove that they remained faithful to the Czechoslovak Republic, have never committed a wrongdoing against the Czech and Slovak nations, and either actively participated in the fight for its liberation or suffered under the Nazi or fascist terror, the Czechoslovak nationality shall be retained.

(2) An application for determination that the Czechoslovak nationality shall be retained can be submitted to a territorially competent district national committee (district administrative commission) within six months from the day of this Decree coming into effect or, if the applicant resides abroad, to a representation abroad. The decision on the application shall be taken by the Ministry of Interior on the motion of the regional national committee, in Slovakia on the motion of the Slovak National Council. These persons shall be considered as Czechoslovak nationals until the application is processed, provided that the district national committee (district administrative commission) or the representation abroad issued to them a certificate of the circumstances stated in the previous paragraph.

(3) The retention of Czechoslovak nationality in the case of Czechoslovak military personnel belonging to the German or Hungarian people shall be decided upon *ex officio* by the Ministry of Interior on the motion the Ministry of National Defence without delay. Until the official decision is taken, they shall be considered as Czechoslovak nationals.

## § 3

Persons who lost their Czechoslovak nationality pursuant to § 1 may, within six months from the day which will be determined by the notice of the Ministry of Interior, published in the Collection of laws and regulations, apply to a territorially competent district national committee (district administrative commission) or to a representation abroad for its return. The decision on such application shall be taken, at its own discretion, by the Ministry of Interior on the motion of the regional national committee, in Slovakia on the motion of the Slovak National Council; however, it shall not be granted if the applicant violated the duties of a Czechoslovak national.

Under a Governmental Notice stipulates otherwise, these cases shall also be governed by general regulation of acquisition of Czechoslovak nationality

§ 4

(1) For the purposes of this Decree, married women and underage children shall be assessed individually.

(2) Applications under § 3 submitted by wives and underage children of Czechoslovak nationals shall be assessed generously. Until a decision thereon is taken, the applicants shall be considered as Czechoslovak nationals.

§ 5

Czechs, Slovaks and persons belonging to other Slavonic people who, at the time of increased threat to the Republic (§ 18 of Decree of the President of the Republic of 19 June 1945, No. 16/1945 Coll.), applied for granting of German or Hungarian nationality, without having been impelled thereto by duress or special circumstances, shall loose their Czechoslovak nationality as of the day of this Decree coming into effect.

§ 6

This Decree shall come into effect as of the day of promulgation; it shall be implemented by the Minister of Interior, in agreement with the Ministers of Foreign Affairs and National Defence.

**Dr. Beneš, in his own hand**

**Fierlinger, in his own hand**

**Masaryk, in his own hand** **gen. Svoboda, in his own hand**

**Nosek, in his own hand**

## Annex 47

## STATEMENT OF THE FEDERAL GOVERNMENT IN THE PROCEEDINGS ON THE SECOND ACTION FOR A DECLARATORY JUDGEMENT OF THE PARLIAMENTARY GROUP OF THE SPD OF 14 AUGUST 1953

## Translation of the German Original

of the Statement of the Federal Government in the proceedings on the second action for a declaratory judgement of the parliamentary group of the SPD of 14 August 1953, quoted in: "Der Kampf um den Wehrbeitrag", Veröffentlichungen des Institutes für Staatslehre und Politik e.V. in Mainz, Isar Verlag München, p. 296, para. 2.

The expropriation of German external assets take place to the benefit of Germany in order to pay off the political reparations debt incumbent on it. For this reason, the Federal Republic of Germany is obliged to indemnify the liquidated owners according to the provisions of their constitution. No particular contractual or legal base is required for substantiating this obligation towards compensation; it ensues from the 'general legal principles' on which the expropriation institution is based.

THIS IS TO CERTIFY that all translations of the German and Czech originals contained in this volume are complete and correct.

Dr. Alexander Goepfert
Agent for the Principality of Liechtenstein
28 March 2002

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IMPRIMÉ EN FRANCE
PRINTED IN FRANCE

ISSN 0074-4433
ISBN 978-92-1-071060-2